TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 139.

WILMINGTON STAR MINING COMPANY, PLAINTIFF IN ERROR,

vs.

MINNIE FULTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 24, 1898.

(19,945.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 20, 1906.

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a In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

Mr. Arthur J. Eddy, Mr. Patrick C. Haley, Mr. Emil C. Wetten, Messrs. Donahue & McNaughton, Attorneys for Minnie Fulton.
Mr. Charles S. Holt, Mr. Arthur Dana Wheeler, Mr. William P. Sidley, Attorneys for Wilmington Star Mining Company.

1 Pleas in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court room, in the City of Chicago, in said District and Division before the Honorable Solomon H. Bethea, District Judge of the United States for said Northern District of Illinois, on Tuesday, the first day of August, being one of the days of the regular July term of said Court, in the year of our Lord one thousand nine hundred and five, and of our Independence the one hundred and thirtieth year.

MARSHALL E. SAMPSELL, *Clerk.*

2 *Grundy County Court Record. Filed April 9, 1902.*

NORTHERN DISTRICT OF ILLINOIS, *Northern Division, ss:*

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

Be it remembered that on this day to-wit: the ninth day of April, in the year of our Lord one thousand nine hundred and two came the defendant in the above entitled cause by its attorneys, Mess. Holt, Wheeler and Sidley and filed in the clerk's office of said court a certain transcript of record from the Circuit Court of Grundy County, Illinois, which said transcript of record (omitting therefrom the three last counts of plaintiff's original declaration) is in words and figures following to-wit:

Transcript of Record and Proceedings.

From Grundy County, Illinois.

Placita.

UNITED STATES OF AMERICA.
STATE OF ILLINOIS, *Grundy County, ss:*

In Circuit Court, September Term, A. D. 1901.

Pleas before the Honorable Charles Blanchard, one of the Judges of the Thirteenth Judicial Circuit of the State of Illinois, and one of the presiding Judges of the Circuit Court of Grundy County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Morris, in said County, on the Third Monday (being the sixteenth day) of September, in the year of our Lord one thousand nine hundred and one and of the Independence of the said United States the one hundred and twenty-sixth.

Present: Honorable Charles Blanchard, Judge of the Thirteenth Judicial Circuit of the State of Illinois. Fred S. Johnson, Clerk, Charles F. Hanson, State's Attorney, Charles W. Johnson, Sheriff.
Attest:
FRED S. JOHNSON, *Clerk.*

3 Be it remembered that heretofore on to-wit: on the 10th day of September, A. D. 1901, there was filed in said Court a certain Praecipe for summons which is in words and figures as follows, to-wit:

Praecipe for Summons. Filed Sept. 10, 1901.

STATE OF ILLINOIS, *County of Grundy, ss:*

Circuit Court of Said Grundy County, March Term, A. D. 1902

MINNIE FULTON, Plaintiff,
vs.
WILMINGTON STAR MINING COMPANY OF COAL CITY, Defendant.

Case. Damages, $5,000.00.

The Clerk of said Court will issue a summons in the above entitled cause to said defendant in a plea of case to the damage of said plaintiff in the sum of five thousand dollars, direct the same to the sheriff of Grundy County to execute, and make it returnable to the March Term of said Court, A. D. 1902.

DONAHUE & McNAUGHTON,
Plaintiff's Attorneys.

To the Clerk of said Court, Joliet, Sept. 9th, 1901.

(Endorsed:) Filed this 10th day of September, A. D. 1901. Fred S. Johnson, Clerk.

Whereupon there was issued by the clerk of said Court a certain summons which is in words and figures as follows to-wit:

Summons. Issued Sept. 10, 1901.

STATE OF ILLINOIS, *Grundy County, ss:*

The People of the State of Illinois to the Sheriff of Grundy County, Greeting:

We command you, that you summon Wilmington Star Mining Company of Coal City, if it shall be found in your county, personally to be and appear before the Circuit Court of said Grundy County, on the first day of the next term thereof, to be holden at the Court House in Morris, in said Grundy County, on the first Monday of March, 1902 to answer unto Minnie Fulton, in a plea of case to the damage of the said plaintiff as she says in the sum of five thousand ($5000.00) dollars. And have you then and there this Writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness, Fred S. Johnson, Clerk of said Court, and the seal thereof, at Morris aforesaid, this 10th day of September, A. D. 1901.

[Circuit Court, Grundy County, Ill.]

FRED S. JOHNSON, *Clerk.*

(Endorsed.)

Return to Summons. Filed Sept. 13, 1901

STATE OF ILLINOIS, *Grundy County, ss:*

I have duly served the within summons by reading the same to Wm. Campbell, superintendent of Wilmington Star Mining Company of Coal City, the president not found in my county, this 12th day of September A. D. 1901, as I am therein commanded.

CHAS. W. JOHNSON, *Sheriff,*
By J. H. FRANCIS, *Deputy.*

Filed in Circuit Court, this 13" day of Sept. A. D. 1901.

FRED S. JOHNSON, *Clerk.*

Be it remembered that heretofore on to-wit: the 10th day of September, A. D. 1901, there was filed in said Court a certain Affidavit, which is in words and figures as follows to-wit:

5 *Affidavit of Minnie Fulton. Filed Sept. 10, 1901.*

STATE OF ILLINOIS, *Grundy County, ss:*

In the Circuit Court of Said Grundy County, September Term, A. D. 1901.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY OF COAL CITY.

Case.

Minnie Fulton, being first duly sworn, on her oath says that she is the plaintiff in the above entitled cause; that she is a poor person and unable to pay the costs in the said suit; and that her cause of action is meritorious. She prays to be permitted to prosecute as a poor person, as by the statute in such case made and provided.

MRS. MINNIE FULTON.

Subscribed and sworn to before me this 7th day of September, A. D. 1901.

JOSEPH BROOKE,
Justice of the Peace.

(Endorsed:) Filed this 10th day of September, 1901. Fred S. Johnson, Clerk.

Be it remembered that heretofore, to-wit: on the 10th day of September, A. D. 1901, there was filed in said Court a certain Declaration which is in words and figures as follows to-wit:

Declaration. Filed Sept. 10, 1901.

STATE OF ILLINOIS, *Grundy County, ss:*

In the Circuit Court of Said Grundy County, to the September Term, A. D. 1901.

Minnie Fulton, plaintiff in this suit by Donahoe & McNaughton her attorneys, complains of the Wilmington Star Mining Company of Coal City, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, defendant of a plea of trespass on the case:

6 For that whereas heretofore, to-wit, on the 27th day of January A. D. 1901 and for a long time prior thereto in the County of Grundy aforesaid the said defendant was possessed of and was operating a coal mine, and so being possessed of and operating said coal mine on the date aforesaid in the County aforesaid, the said defendant had in its employ as coal miners a large number of men,

amongst whom was one Samuel Fulton, husband of said plaintiff, who was then and there employed by defendant as a trackman and mine laborer; that said Samuel Fulton was then and there engaged in working in said coal mine.

That it then and there became and it was the duty of the said defendant in the use, management and operation of said coal mine, to maintain therein currents of fresh air, sufficient for the health and safety of all men and animals employed therein, as by the statute in such case made and provided; yet the said defendant wholly regardless of its duty in that behalf, wilfully failed to maintain in said coal mine currents of fresh air sufficient for the health and safety of said Samuel Fulton, contrary to the form of the statute in such case made and provided; by means and in consequence of which wilful failure on the part of the said defendant to so maintain in said coal mine such currents of fresh air as aforesaid, a large quantity of dangerous gas was suffered and permitted, by the said defendant, to accumulate, be and remain through and in the place in said coal mine where the said Samuel Fulton was then engaged at work in the line of his employment.

And the plaintiff avers that while the said Samuel Fulton was then and there engaged in the prosecution of his work, as aforesaid, in said coal mine, said dangerous gas, so permitted to accumulate therein, as aforesaid, became ignited and then and there exploded, and the said Samuel Fulton then and there and thereby suffered and sustained such injuries as then and there caused his death. And whereas also the said defendant on to-wit, the 27th day of January, A. D. 1901, and for a long time prior thereto, was possessed of and was using and operating a certain other coal mine in to-wit: the County of Grundy aforesaid, and so being possessed of and using and operating said coal mine, the said defendant, had to-wit, on the day and year aforesaid, to-wit: in the County of Grundy aforesaid, employed one Samuel Fulton, then husband of said plaintiff, as trackman and mine laborer, as aforesaid, together with a large number of others, as coal miners, to serve the said defendant in working and operating said coal mine; that it thereupon became and it was the duty of the said defendant in the use, management and operation of said coal mine, to see that in
7 said coal mine, cross-cuts were made at proper distances apart, to secure the best ventilation at the face of all working places, as by the statute in such cases made and provided; yet the said defendant wholly regardless of its duty in that behalf, and in willful violation thereof, wilfully failed, refused and neglected to make and provide in such coal mine, a sufficient number of cross-cuts, for ventilation purposes, contrary to the statute in such cases made and provided; by means whereof and in consequence of which wilful failure on the part of said defendant as aforesaid, dangerous gases were suffered and permitted to accumulate be and remain, at and near the face of the working place, in said coal mine where the said Samuel Fulton was then and there employed at work, as aforesaid.

And the plaintiff avers, that while the said Samuel Fulton was then and there employed at work, as aforesaid, said dangerous gases,

so permitted to be and accumulate in said coal mine, as aforesaid, at the place aforesaid, became ignited thereby then and there causing an explosion, and said Samuel Fulton by reason of the premises, then and there suffered and sustained such severe injuries as then and there caused his death.

And whereas also, the said defendant, heretofore to-wit, on the 27th day of January, A. D. 1901, and for a long time prior thereto was possessed of and was using and operating a certain coal mine, situated in the county of Grundy aforesaid, and being so possessed of and operating said coal mine the said defendant had in its employ, as a trackman and mine laborer, the said Samuel Fulton, then husband of said plaintiff, who was then and there with other employees of the said defendant, engaged in the work of trackman and mine laborer, and performing such labor as is incident to said work: that it thereupon became and it was the duty of the said defendant, in the use, management and operation of said coal mine, to see that all stoppings along air-ways in said coal mine, were properly and promptly built, as provided by the statutes of the State of Illinois: yet the said defendant, wholly regardless of its duty in that behalf, willfully failed and neglected to build necessary stoppings, in a substantial manner to close cross-cuts connecting the inlet and outlet air-courses in said coal mine, said coal mine being then and there, a coal mine, in which dangerous gases were generated, contrary to the form of the statute in such case made and provided: by means and in consequence of such wilful failure and neglect on the part of said defendant, as aforesaid, a large quantity of dangerous gas was suffered and permitted to accumulate be and remain at the place in said coal mine where said Samuel Fulton was then and there at the special instance and request of the said defendant required to work.

8 And plaintiff avers that while said Samuel Fulton was so engaged in said coal mine, as aforesaid, said dangerous gas then and there became ignited and exploded, then and there and thereby inflicting upon the said Samuel Fulton such severe wounds as immediately caused his death.

* * * * * * *

(The three last counts of plaintiff's declaration are here omitted, for the reasons that demurrers to the said three counts were sustained by the Court.)

And plaintiff avers that the said Samuel Fulton left him surviving, said plaintiff Minnie Fulton, his widow, Annie Fulton, Mary Fulton, Alexander Fulton, William Fulton and Maggie Fulton, his minor children and only lineal heirs at law, to whom a cause of action has accrued for the recovery of damages due to the loss of the life of the said Samuel Fulton.

Wherefore, the said plaintiff says that she has sustained damage to the amount of five thousand dollars and therefore she brings this suit, etc.

DONAHOE & McNAUGHTON,
Plaintiff's Attorneys.

(Endorsed) Filed *Nunc Pro Tunc* as of 10" day of Sept., 1902. Fred S. Johnson, Clerk.

Be it remembered that afterwards on to-wit: the 13th day of January, A. D. 1902, there was issued out of said Court a certain alias summons which is in words and figures as follows, to-wit:

Alias Summons. Issued Jan. 13, 1902.

STATE OF ILLINOIS, *Grundy County, ss:*

The People of the State of Illinois, to the Sheriff of Grundy County, Greeting:

We command you, that you summon Wilmington Star Mining Company if it shall be found in your county, personally to be and appear before the Circuit Court of said Grundy County, on the first day of the next term thereof, to be holden at the Court House in Morris, in said Grundy County, on the first Monday of March, 1902, to answer unto Minnie Fulton in a plea of case to the damage of the said plaintiff as she says in the sum of five thousand ($5000.00) dollars. And have you then and there this Writ, with an endorsement thereon, in what manner you shall have executed the same.

[Circuit Court, Grundy County, Ill.]

Witness Fred S. Johnson, Clerk of our said Court, and the seal thereof, at Morris aforesaid, this 1st day of November, A. D. 1901.

FRED S. JOHNSON, *Clerk.*

(Endorsed)

9 *Return to Summons. Filed Jan.* 13, 1902.

STATE OF ILLINOIS, *Grundy County, ss:*

I have duly served the within summons by reading the same to and by leaving a true copy thereof with William Campbell, Superintendent and agent of the within named Wilmington Star Mining Company (the president of said Wilmington Star Mining Company not found in my County) this 17 day of December A. D. 1901, as I am therein commanded.

CHAS. W. JOHNSON, *Sheriff.*

Filed in Circut Court, this 13th day of January A. D. 1902.

FRED S. JOHNSON, *Clerk.*

Be it remembered that afterward on to-wit: the 8th day of October, 1901, there was filed in said Court a certain Amendment which is in words and figures as follows to-wit:

Amendment to Declaration. Filed Oct. 8, 1901.

STATE OF ILLINOIS, *Grundy County, ss:*

Circuit Court Thereof, March Term, A. D. 1902.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

Trespass on the Case.

Now comes the plaintiff in this suit, by Donahoe & McNaughton and E. L. Clover, her attorneys, and by leave of court first had and obtained for that purpose, amends her declaration filed herein in the manner following, that is to say:

By striking out the words "of Coal City" immediately following the word "Company" in the fourth line from the top of the first page of said declaration, and by striking out the word "Illinois" in the sixth line from the top of said page and substituting the word "Wisconsin" therefor.

DONAHOE & McNAUGHTON &
E. L. CLOVER, *Att'ys for Plaintiff.*

(Endorsed:) Filed *Nunc pro tunc* as of 8th day of Oct. 1901, Fred S. Johnson, Clerk.

10 Be it remembered that afterwards to-wit: on the 8th day of October A. D. 1901, the same being one of the regular days of the September Term of the Circuit Court of said County the following among other proceedings were had, made and entered of record in words and figures following, to-wit:

Order of Oct. 8, 1901, Granting Leave to Amend.

2281.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY OF COAL CITY.

Case.

Now comes the plaintiff by her attorney and on his motion it is ordered by the Court that leave be and is hereby granted to the plaintiff to amend the Praecipe, Summons and Declaration on file in this cause by striking out the words "of Coal City" in the name of the defendant.

And it is further ordered by the Court on motion of the plaintiff by her attorney that a new summons be issued by the clerk of this Court against the defendant in this cause.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, *Grundy County*, ss:

In the Circuit Court, March Term, A. D. 1902.

Pleas before the Honorable Samuel C. Stough, one of the Judges of the Thirteenth Judicial Circuit of the State of Illinois, and one of the presiding Judges of the Circuit Court of Grundy County, in the State aforesaid, and at a term thereof begun and held at the Court House, in the City of Morris, in said County, on the first Monday (being the Third day) of March in the year of our Lord one thousand nine hundred and two, and of the independence of the said United States, the one hundred and twenty-sixth.

1 Present: Honorable Samuel C. Stough, Judge of the Thirteenth Judicial Circuit of the State of Illinois. Fred S. Johnson, Clerk. Charles F. Hanson, State's Attorney. Charles W. Johnson, Sheriff.

Attest:

FRED S. JOHNSON, *Clerk*.

Be it remembered that afterwards on to-wit: the 4th day of March A. D. 1902, there was filed in said Court a certain petition which is in words and figures as follows, to-wit:

Petition for Removal. Filed March 4, 1902.

STATE OF ILLINOIS, *Grundy County*, ss:

In the Circuit Court of Grundy County.

MINNIE FULTON, Plaintiff,

vs.

THE WILMINGTON STAR MINING COMPANY, Defendant.

Petition to Remove this Case to the United States Circuit Court.

To the Honorable the Circuit Court of Grundy County, State of Illinois:

Your petitioner the Wilmington Star Mining Company respectfully shows that it is the defendant in the above entitled suit, that the matter in dispute therein exceeds, exclusive of interest and costs the sum of two thousand ($2000.00) dollars.

Your petitioner further shows that said suit is of a civil nature and is an action of trespass on the case to recover damages in the sum of $5000.00 dollars from your petitioner, growing out of certain injuries to the plaintiff Minnie Fulton which are alleged to have been caused by the wrongful act, neglect or default of your petitioner.

12 Your petitioner further shows that in the said above mentioned suit there is a controversy which is wholly between citizens of different states and which can be fully determined as between them, to-wit: a controversy between your said petitioner, which avers that it was at the commencement of this suit and still is a citizen and a resident of the State of Wisconsin and the said plaintiff, Minnie Fulton, who your petitioner avers was at the commencement of this suit and still is a citizen and a resident of the State of Illinois and that both the said Minnie Fulton and your petitioner are actually interested in said controversy, that your petitioner was not at the time of the commencement of this action, nor is it now a citizen or a resident of the State of Illinois, but that at the time of the commencement of this action, it was and has been ever since and now is a corporation duly organized and existing under the laws of the state of Wisconsin, and has and has had at all of said times its principal office and place of business in the City of Summit in the State of Wisconsin and that your petitioner is a citizen and a resident of the state of Wisconsin.

And your petitioner offers herewith, a bond, with good and sufficient surety in the penal sum of five hundred ($500.00) dollars conditioned for its entering in the Circuit Court of the United States for the Northern District of Illinois, Northern Division on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by said Circuit Court, if said Court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays this Honorable Court to proceed no farther herein except to make an order of removal as required by law, and to accept the said surety and bond and to cause the record herein to be removed into said Circuit Court of United States within and for the Northern District of Illinois, Northern Division, according to the statute in such case made and provided.

And your petitioner will ever pray, etc.

WILMINGTON STAR MINING COMPANY,
By MILFORD D. BUCHANAN, *President.*

A. R. JORDAN,
J. W. RAUSCH, *Attys.*

13 STATE OF ILLINOIS, *Grundy County ss:*

Milford D. Buchanan being duly sworn on oath deposes and says that he is the president of the Wilmington Star Mining Company, the petitioner in the above entitled cause and that as such president he has authority to make the foregoing application for removal; that he has read the foregoing petition and knows the contents thereof and that the matters and things therein stated are true as he verily believes.

MILFORD D. BUCHANAN.

Subscribed and sworn to by the said Milton D. Buchanan this 4th day of March, A. D. 1902, before me.

J. W. RAUSCH.

[J. W. Rausch, Notary Public, Grundy Co. Ills.]

(Endorsed) Filed this 4 day of Mar. 1902, Fred S. Johnson, Clerk.

Be it remembered that afterwards on, to-wit: the 4th day of March A. D. 1902, there was filed in said Court a certain Bond which is in words and figures as follows, to-wit:

Bond on Removal. Filed March 4, 1902.

Bond.

Know all men by these presents, that we, the Wilmington Star Mining Company as principal, and Jacob W. Rausch of Morris, in the County of Grundy and State of Illinois, as surety, are held and firmly bound unto Minnie Fulton and all other persons whom it may concern in the penal sum of five hundred ($500.00) dollars lawful money of the United States for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally and firmly by these presents.

Whereas, the Wilmington Star Mining Company, principal above named has petitioned the Circuit Court of Grundy County in the State of Illinois, for the removal of a certain suit therein pending wherein Minnie Fulton is plaintiff and the Wilmington Star Mining Company is defendant unto the Circuit Court of the United States in the Northern District of Illinois, Northern Division.

14 Now, therefore, the condition of this obligation is such, that if the above bounden Wilmington Star Mining Company shall enter in such Circuit Court of the United States on the first day of its next session, a copy of the record in such suit and shall pay all costs that may be awarded by said Circuit Court, if said Circuit Court shall hold that such suit was improperly or wrongfully removed thereto and shall also appear in said Circuit Court and enter special bail in such case, if special bail is required therein and shall do such other appropriate acts, as by the acts of Congress in that behalf requires to be done upon the removal of such suit from said State Court into the United States Court, then this obligation to be void, otherwise enforced.

Witness our hands and seals, this 4th day of March, 1902.

WILMINGTON STAR MINING COMPANY,
By MILFORD D. BUCHANAN, *Pres't.* [SEAL.]
JACOB W. RAUSCH. [SEAL.]

Attest:
D. W. BUCHANAN, *Secretary.*

Wilmington Star Mining Company Incorporated 1892.

STATE OF ILLINOIS, *Grundy County, ss:*

Jacob W. Rausch, being duly sworn says, that he is a resident and householder in the County of Grundy and worth the sum of one thousand ($1000.00) dollars, over and above all debts and liabilities,

which he owes or has incurred and exclusive of property exempt from levy and sale under execution.

JACOB W. RAUSCH.

Sworn to before me, this 4th day of March, 1902.

O. S. HAGEN,
Notary Public.

[O. S. Hagen, Notary Public, Grundy Co., Ills.]

15 UNITED STATES OF AMERICA, *Northern District of Illinois, County of Grundy, ss:*

I hereby certify that on this 4th day of March 1902, before me, personally came and appeared Milford D. Buchanan, President of the principal in the within bond, personally known to me and known to be the president as aforesaid and the person who executed the foregoing bond as president of and for said principal and that he thereupon acknowledged that he executed the same in the manner and form and for the purpose therein mentioned as a free act and deed of said principal

JACOB W. RAUSCH,
Notary Public.

[J. W. Rausch, Notary Public, Grundy Co., Ills.]

STATE OF ILLINOIS, *Grundy County, ss:*

I hereby certify that on this 4th day of March, 1902, before me personally came and appeared Jacob W. Rausch to me well known and known to me to be the person in, and who executed the foregoing bond as surety and thereupon acknowledged to me that he executed the same in the manner and form and for the purpose therein mentioned.

O. S. HAGEN,
Notary Public.

[O. S. Hagen, Notary Public, Grundy Co., Ills.]

Bond approved by me this 4" day of M'eh, 1902.

S. C. STOUGH, *Judge.*

(Endorsed:) Filed this 4 day of Mar. 1902, Fred S. Johnson, Clerk.

16 Be it remembered that afterwards to-wit: on the 4th day of March, A. D. 1902, it being one of the regular days of the said March term A. D. 1902, the following among other proceedings were had, made and entered of record, in words and figures, as follows, to-wit:

Order of March 4, 1902, Allowing Removal, etc.

2281.

MINNIE FULTON
vs.
WILMINGTON STAR MINING CO.

Case.

Now on this day comes the plaintiff by her attorneys, Donahoe & McNaughton and E. L. Clover and the defendant by its attorney, A. R. Jordan, also comes.

Now on this day comes the plaintiff by her solicitors, and enters a motion for leave to file copy of lost declaration in this cause *nunc pro tunc* as of the 10th day of September A. D. 1901, and the Court being now fully advised in the premises, upon consideration thereof doth order that said motion be and the same is hereby granted. It is therefore ordered that leave be and is hereby granted to file copy of lost declaration in this cause *nunc pro tunc* as of the 10th day of September, A. D. 1901.

Now again comes the plaintiff and on her motion it is ordered by the Court that leave be and is hereby granted to file amendment to declaration in this cause *nunc pro tunc* as of the 8th day of October, A. D. 1901.

And now comes the defendant the Wilmington Star Mining Company by its attorney A. R. Jordan, and the plaintiff by her attorneys, Donahoe & McNaughton and E. L. Clover, also comes.

And now comes the defendant by its attorney A. R. Jordan, and presents a bond in the penal sum of five hundred dollars together with a petition for the removal of this cause from this court to the Circuit Court of the United States, for the Northern Division — District of Illinois, by which it appears that the matter in dispute in this suit exceeds the sum of two thousand dollars, that there is a controversy between citizens of different states, that at the time of the commencement of this suit, the said defendant was and still is a citizen of the state of Wisconsin, and that the said plaintiff, Minnie Fulton, was and still is a citizen of the State of Illinois.

And now the court having examined the bond and the petition of said defendant to remove this cause to the Circuit Court of the United States for the Northern District of Illinois, Northern
17 Division and being now fully advised in the premises, upon consideration thereof, doth order that the bond be and the same is hereby approved.

It is further ordered by the Court that the prayer of the petition be and the same is hereby granted.

Certificate of Clerk.

STATE OF ILLINOIS, *Grundy County, ss:*

I, Fred S. Johnson, clerk of the Circuit Court of Grundy County, in the State aforesaid, and keeper of the records and files of said Court, do hereby certify the above and foregoing to be a true, perfect and complete copy of the files and all orders made by the court in a certain cause lately pending in said Court on the law side thereof wherein Minnie Fulton was plaintiff and The Wilmington Star Mining Company was defendant as the same appears from the records and files of said Court now in my office remaining.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Morris, Illinois this twentieth day of March, A. D. 1902.

[SEAL.] FRED S. JOHNSON, *Clerk.*

(Endorsed:) Filed Apr. 9, 1902, Marshall E. Sampsell, Clerk.

Entry of Filing of Demurrer, May 6, 1902.

And on to-wit: the sixth day of May, 1902, came the defendant in said entitled cause by its attorneys and filed in the clerk's office of said Court its certain demurrer to the declaration which demurrer was sustained by the court and not copied here.

And on to-wit: the 6th day of October, in the July term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

18 *Order of Oct. 6, 1902, Granting Leave to Amend Declaration.*

Order of October 6, 1902.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY OF COAL CITY.

Case.

Now come the parties by their attorneys, and by agreement of counsel, plaintiff has leave to amend the declaration hereby by changing the name of plaintiff and to file additional counts instanter. The demurrer on file to the original declaration to stand to said additional counts.

Entry of Filing Additional Counts, Oct. 8, 1902.

And on to-wit: the 8th day of October, 1902, came the plaintiff in said entitled cause by her attorneys and filed in the clerk's office of said court her certain additional counts to which demurrer was sustained by the court and said additional count not copied here.)

Entry of Filing Demurrer to Additional Counts, Oct. 20, 1902.

(And on to-wit: the 20th day of October, 1902, came the defendant in said entitled cause by its attorneys and filed in the clerk's office of said court its certain demurrer to additional counts heretofore filed herein, said demurrer was sustained by the court and not copied here.)

And on to-wit: the 24th day of October, being one of the days of the regular July Term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of Oct. 24, 1902, Sustaining Demurrers.

Order of October 24, 1902.

Demurrer to 2nd, 3rd and 4th Additional Counts sustained.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING CO. OF COAL CITY.

Now come the parties by their attorneys and the general and special demurrer to the first additional count is heard and sustained, with leave to the plaintiff to amend in five days. The demur-
19 rer to the second and third additional counts is also heard and sustained and the demurrer to the fourth additional count is also heard and sustained, and the general and special demurrers to the original declaration herein *is* withdrawn.

And on to-wit the 28th day of October, 1902, came the plaintiff in said entitled cause by her attorney and filed in the clerk's office of said Court her certain Additional Count in words and figures following to-wit:

Additional Count to Declaration. Filed Oct. 28, 1902.

Additional Count.

In the Circuit Court of the United States within and for the Northern District of Illinois, Northern Division, October Term, A. D. 1902.

MINNIE FULTON, Plaintiff,
vs.
WILMINGTON STAR MINING COMPANY.

Case.

Additional Count to Plaintiff's Declaration, Leave to File the Same Having Been First Had and Obtained.

And whereas also heretofore, to-wit, on the 27th day of January, A. D. 1901, and for a long time prior thereto, in the County of Grundy and State of Illinois, the said defendant was possessed of and was operating a certain coal mine, and being so possessed of and operating said coal mine the said defendant had in its employ a large number of men amongst whom was one Samuel Fulton, husband of the said plaintiff, who were then and there engaged in working in and about said coal mine in behalf of said defendant.

That it then and there became and it was the duty of the said defendant, in the use, management and operation of said coal mine, to inspect all places therein where men were expected to pass or to work, and observe whether there were then and there accumulations of gas therein before said Samuel Fulton and other employees of the said defendant were permitted to enter into said mine; yet the said defendant, wholly regardless of its duty in that behalf, wilfully failed and neglected to have the place in said coal
20 mine where said Samuel Fulton was then and there expected to pass and to work inspected before said Samuel Fulton was permitted to enter into said coal mine, contrary to the form of the statute in such case made and provided; by means whereof and in consequence of which wilful failure to inspect said coal mine by said defendant, as aforesaid, a large quantity of dangerous gas was suffered and permitted to accumulate, be and remain in said coal mine at the place therein where said Samuel Fulton was expected to pass and to work.

And the plaintiff avers that on the date aforesaid said Samuel Fulton was permitted to enter into said coal mine and to work therein before the said defendant had inspected the places therein where the said Samuel Fulton was expected to pass and to work, and before said accumulations of dangerous gas then in said coal mine had been removed therefrom; and while he, the said Samuel Fulton, was engaged at work in said coal mine, said dangerous gas so wilfully permitted to accumulate, be and remain therein, as aforesaid, ignited and then and there caused an explosion whereby the

said Samuel Fulton suffered and sustained such injuries as then and there caused his death.

And plaintiff avers that the said Samuel Fulton left him surviving said plaintiff, Minnie Fulton, his widow, Annie Fulton, Mary Fulton, Alexander Fulton, William Fulton and Maggie Fulton, his minor children and only lineal heirs at law, to whom a cause of action has accrued for the recovery of damages due to the loss of life of the said Samuel Fulton.

Wherefore the said plaintiff says that she has sustained damage to the amount of Five Thousand Dollars and therefore she brings this suit.

MINNIE FULTON,
By DONAHOE & McNAUGHTON,
Her Attys.

(Endorsed:) Filed Oct. 28, 1902. Marshall E. Sampsell, Clerk.

And on to-wit: the 30th day of October, 1902, came the defendant in said entitled cause by its attorneys and filed in the clerk's office of said court its certain Plea to the first, second and third original counts in words and figures following to-wit:

21 *Plea. Filed Oct. 30, 1902.*

Plea.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

And the defendant, by Holt, Wheeler & Sidley, its attorneys comes and defends the wrong and injury when, etc., and says that it is not guilty of the said supposed grievances in said first, second and third original counts above alleged against it, and of this it puts itself upon the country, etc.

HOLT, WHEELER & SIDLEY,
Attorneys for Defendant.

(Endorsed:) Filed Oct., 30, 1902. Marshall E. Sampsell, Clerk.

Entry of Filing of Demurrer, Oct. 30, 1902.

(And on to-wit: the 30th day of October, 1902, came the defendant in said entitled cause by its attorneys and filed in the clerk's office of said court its certain demurrer to the 4th, 5th and 6th original counts the amended 1st additional count and the amended fourth additional Count, which said demurrer was sustained and not copied here.)

And on to-wit: the 30th day of October, in the July term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

22 *Order of Oct. 30, 1902, Postponing Hearing.*

Order of October 30, 1902.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING CO.

The motion of the plaintiff for leave to file additional counts herein is postponed to the 31st inst.

And on to-wit: the 5th day of November, in the July term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of Nov. 5, 1902, Sustaining and Overruling Demurrers.

Order of November 5, 1902.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING CO.

Now again come the parties by their attorneys, and the plaintiff has leave to file an amended fourth additional count to the declaration herein *nunc pro tunc* as of October 28th., 1902, and the defendant has leave *nunc pro tunc* as of October 28th, 1902, to re-file demurrers to the fourth, fifth and sixth original counts of said declaration; and now comes on to be heard the demurrer to the declaration herein and to the various counts thereof; and the court having heard the arguments of counsel, and being now fully advised in the premises, It is Ordered that the demurrer to the fourth original count be sustained; the demurrer to the fifth original count be sustained, with leave to the plaintiff to amend within five days; the demurrer to the sixth original count be sustained; the demurrer to the amended first additional count be sustained, with leave to the plaintiff to amend within five days; and the demurrer to the amended fourth additional count be overruled.

And on to-wit: the 14th day of November, in the July term of said Court, 1902, in the records of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

23 *Order of Nov. 14, 1902, Granting Leave to File.*

Order of November 14, 1902.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING CO.

Now come the parties by their attorneys and on motion of the plaintiff's attorney leave is given to file instanter an amended first additional count and also the fifth, sixth and seventh additional counts, and the defendant is ruled to plead to said amended first additional count and to the fifth, sixth and seventh additional counts within ten days.

And on to-wit: the 14th day of November, 1902, came the plaintiff, in said entitled cause by her attorneys and filed in the clerk's office of said court certain additional counts. Demurrer was sustained to the amended first, additional and fifth and sixth additional counts which are not copied here. The seventh additional count is in the words and figures following to-wit:

Additional Counts. Filed Nov. 14, 1902.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division, October Term, A. D. 1902.

MINNIE FULTON
vs.
WILMINGTON STAR MINING CO.

Case.

(First appears an amended first additional count to plaintiff's declaration, and a fifth and sixth additional counts, to which said counts, defendant demurred, and the said demurrers were sustained by the Court.)

And whereas also as heretofore, towit, on the 27th day of January, 1901, and for a long time prior thereto, towit, in the County of Grundy and State of Illinois, said defendant was possessed of and was using and operating a coal mine, and being so possessed of said coal mine and being so engaged in the operation thereof, the said defendant had in its employ a large number of men, amongst whom

was one Samuel Fulton, husband of the said plaintiff, who was
24 then and there engaged by the said defendant as a trackman or mine laborer in and about said coal mine.

That it thereupon became and it was the duty of the said defendant to refuse to allow said Samuel Fulton to enter said coal mine to work therein until all conditions in said coal mine should have been made safe, except under the direction of said defendant's mine manager.

And plaintiff avers that there was then and there in said coal mine a large quantity of dangerous gas which had been suffered and permitted by the said defendant to be, accumulate and remain therein, and that the existence of said gas so in said mine constituted an unsafe condition therein, all of which the said defendant then and there well knew; yet the said defendant, wholly regardless of its duty in that behalf, wilfully failed and neglected to prevent the said Samuel Fulton from entering said coal mine to work therein before said dangerous gas had been removed therefrom and the conditions in said mine rendered safe, but on the contrary the said defendant suffered and permitted the said plaintiff to enter said coal mine to work therein before said dangerous gas had been removed therefrom and the conditions in said mine rendered safe, he, the said Samuel Fulton, not being then and there under the direction of said defendant's mine manager, contrary to the statute in such case made and provided, by means whereof and in consequence of which wilful failure on the part of the defendant, as aforesaid, said dangerous gas so permitted to be, accumulate and remain in said coal mine became ignited and then and there caused an explosion, and the said Samuel Fulton then and there and thereby suffered and sustained such injuries as then and there caused his death.

And plaintiff avers that the said Samuel Fulton left him surviving said plaintiff Mary Fulton his widow, Annie Fulton, Mary Fulton, Alexander Fulton, William Fulton, and Maggie Fulton, his minor children, and only lineal heirs at law, to whom a cause of action has accrued for the recovery of damages due to the loss of life of the said Samuel Fulton.

Wherefore the said plaintiff says that she sustained direct damages to the amount of Five Thousand dollars, and therefore she brings this suit, etc.

MINNIE FULTON,
By DONAHUE & McNAUGHTON,
Her Att'ys.

(Endorsed:) Filed Nov., 14, 1902. Marshall E. Sampsell, Clerk.

25 And on to-wit: the 22nd day of November, in the July term of said Court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of Nov. 22, 1902, Extending Time to Plead.

Order of November 22, 1902.

Time to Plead Additional Count Extended Five Days.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING CO.

By agreement of counsel, the time for defendant to plead to the additional counts herein is extended five days.

(And on to-wit: the 29th day of November, 1902, came the defendant in said entitled cause by its attorneys and filed in the clerk's office of said Court its certain demurrer to the amended first additional count and to the fifth, sixth and seventh additional counts, which said demurrer was sustained by the Court as to the amended first additional count and the fifth and sixth additional counts and was withdrawn as to the seventh additional count. Said demurrer not copied here.)

And on to-wit: the 30th day of December, being one of the days of the regular December term of said Court, 1902, in the record and proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of Dec. 30, 1902, Sustaining Demurrers, etc.

Order of December 30, 1902.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

Now again comes the parties by their attorneys, and thereupon comes on to be heard the demurrer to the amended first additional count and to the fifth, sixth and seventh additional counts, all of which counts were filed herein on November 14th, 1902, and the Court having heard the arguments of counsel, and being now fully advised in the premises, It is Ordered that the demurrer be
26 sustained to the amended first additional count and to the fifth and sixth additional counts, and that the defendant have leave to withdraw its demurrer to the seventh additional count, which is accordingly done. It is further Ordered that leave be given to the plaintiff to file amended first, fifth and sixth additional counts within ten days, and that defendant plead to said amended and said seventh additional counts within five days thereafter.

And on to-wit: the seventh day of January, 1903, came the plaintiff in said entitled cause by her attorneys and by leave of Court first had and obtained filed in the clerk's office of said Court her certain 2nd amended 1st and her 5th and 6th additional counts in words and figures following to-wit:

Second Amended 1st Additional Count and the Amended Fifth and Sixth Additional Counts.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division, January Term, A. D. 1903.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

Case.

The second amended first additional count, and the amended fifth and sixth additional counts to plaintiff's declaration herein, leave to file the same having been first had and obtained:

Minnie Fulton, plaintiff in this suit, in these the second amended first additional count, and the amended fifth and sixth additional counts to her declaration herein, by Donahoe & McNaughton, her attorneys, further complains of the Wilmington Star Mining Company, defendant of a plea of trespass in the case.

For that whereas, heretofore, to-wit, on the 27th day of January, A. D. 1901 and for long time prior thereto in the County of Grundy, State of Illinois, said defendant was possessed of and using and operating a coal mine and being so possessed of said coal mine
27 and being so engaged in the operation thereof, the said defendant had in its employ, a large number of men, among whom was one Samuel Fulton, husband of the said plaintiff, who was then and there engaged by the said defendant, as a track-man or mine-laborer in said coal mine.

That it then and there became and it was the duty of the said defendant in the use, management and operation of said coal mine to keep careful watch over all the ventilating apparatus and air currents in said coal mine and in case of accident to fan or machinery, by which said currents were obstructed or stopped to at once, order the withdrawal of the men, then in said coal mine and prohibit their return thereto until thorough ventilation had been by the said defendant re-established.

And the plaintiff avers that a part of the machinery used in said coal mine for creating air currents therein then and there accidentally became broken or lost, to-wit, the attachment to a certain valve on a certain steam-pipe then and there used for the conduct of steam, generated for the purpose of running a fan then and there used by the said defendant for ventilating purposes, whereby the air currents in said coal mine then and there became obstructed and stopped all of which was then and there well known to the said de-

fendant. Plaintiff avers that in consequence of said obstruction and stoppage of the air currents a large quantity of dangerous gas was thereby then and there suffered and permitted to accumulate, be and remain in said coal mine, at the place therein where said Samuel Fulton, was required to pass to work in the performance of his duty as such track-man or mine-laborer.

Plaintiff further avers that the said defendant, well knowing the premises in total disregard of its duty to the said Samuel Fulton, as aforesaid, then and there wilfully failed and neglected to order the withdrawal of said Samuel Fulton or other persons then in said coal mine, and prohibit his or their return thereto, until thorough ventilation had been re-established, contrary to the statute in such case made and provided; by means and in consequence of which wilful failure on the part of the said defendant said Samuel Fulton, was then and there suffered and permitted to continue and remain in said coal mine in the prosecution of his work, as aforesaid. And while said Samuel Fulton was so engaged in the prosecution of his work, in said coal mine said dangerous gas so then and there permitted to accumulate, be and remain in said coal mine became ignited and then and there exploded and the said Samuel Fulton, then and there and thereby suffered and sustained such injuries as then and there caused his death.

28 And plaintiff avers that the said Samuel Fulton, left him surviving, said plaintiff Minnie Fulton, his widow, Annie Fulton, Mary Fulton, Alexander Fulton, William Fulton and Maggie Fulton, his minor children, and only lineal heirs at law to whom a cause of action has accrued, for the recovery of damages due to the loss of the life of the said Samuel Fulton.

Wherefore the said plaintiff says that she has sustained direct damages to the amount of Five Thousand Dollars, and therefore she brings this suit, etc.

And whereas also, heretofore, to-wit, on the 27th day of January, A. D. 1901, and for a long time prior thereto, to-wit, in the County of Grundy, State of Illinois, said defendant was possessed of and using and operating a coal mine, and being so possessed of said coal mine, being so engaged in the operation thereof, said defendant had in its employ a large number of men, among whom was one Samuel Fulton, then husband of the said plaintiff, who was then and there engaged by the said defendant as a track-man, or mine-laborer in said coal mine.

That it then and there became and it was the duty of the said defendant in the use, management and operation of said coal mine, to then and there cause its mine-examiner to visit said mine before said Samuel Fulton and the other employees of the said defendant were permitted to enter the same, and see that the air current in said mine was travelling in proper course and in proper quantity; yet the said defendant wholly regardless of its duty in that behalf, wilfully failed and neglected to then and there cause its mine-examiner to visit said coal mine before said Samuel Fulton and other employees of the said defendant, aforesaid, were permitted to enter said coal mine, and wilfully failed and neglected to see that the air current in said coal mine was then and there travelling in its proper course, and

in proper quantity, contrary to the statute in such case made and provided: by means whereof, and in consequence of which wilful failure and neglect a large quantity of dangerous gas which had before that time accumulated in said mine at the place therein where said Samuel Fulton, was then and there required to pass in the performance of his duty as such track-man or mine-laborer, was suffered and permitted to be and remain therein unbroken and undisturbed.

Plaintiff further avers that the said Samuel Fulton, was then and there permitted to enter said coal mine before said defendant's mine-examiner had visited said coal mine and had seen that the air current in said coal mine was travelling in proper course and in proper quantity and before said accumulation of said dangerous gas
29 then in said coal mine had been broken up or removed therefrom: and while said Samuel Fulton was then and there engaged in the performance of his duty, in said coal mine as aforesaid, said dangerous gas so permitted to accumulate, be and remain therein as aforesaid, became ignited and then and there caused an explosion whereby the said Samuel Fulton then and there and thereby suffered and sustained such injuries as caused his immediate death.

And plaintiff avers that the said Samuel Fulton left him surviving said plaintiff, Minnie Fulton, his widow, Annie Fulton, Mary Fulton, Alexander Fulton, William Fulton and Maggie Fulton, his minor children and only lineal heirs at law, to whom a cause of action has accrued for the recovery of damages due to the loss of the life of the said Samuel Fulton.

Wherefore the said plaintiff says that she has sustained direct damages to the amount of Five Thousand dollars, and therefore she brings this suit, etc.

And whereas also heretofore, to-wit, on the 27th day of January, A. D. 1901 and for a long time prior thereto, to-wit in the County of Grundy and State of Illinois, said defendant was possessed of and using and operating a coal mine and being so possessed of said coal mine and being so engaged in the operation of, the said defendant had in its employ, a large number of men, among whom was one Samuel Fulton, who was then and there engaged by the said defendant as a track-man or mine-laborer in said coal mine.

That it then and there became and it was the duty of the said defendant in the use, management and operation of said coal mine when working places in said coal mine were discovered in which accumulations of gas existed to place a conspicuous mark thereat, as notice to all men to keep out as by the statute in such case made and provided.

Plaintiff further avers that there were then and there working places in said coal mine in which accumulations of gas existed all of which had before that time been discovered by the said defendant, and all of which was to it then and there well known: yet the said defendant wholly regardless of its duty as aforesaid, wilfully failed and neglected to place a conspicuous mark at the place in said coal mine where accumulations of gas existed, as aforesaid, as a

notice to the said Samuel Fulton and other men then in said coal mine to keep out, contrary to the statute in such case made and provided; by means whereof and in consequence of such wilful failure on the part of the said defendant, as aforesaid, said Samuel Fulton did not receive the notice or warning of the existence of such accumulation of gas as aforesaid as by the law required, and
30 did not know of the danger which then and there existed in said coal mine, in consequence of the existence therein of said accumulation of gas as aforesaid; by means and in consequence whereof said Samuel Fulton proceeded to and was then and there in the prosecution of his work, at and near the place in said coal mine, where said accumulations of gas existed as aforesaid. And plaintiff avers that while the said Fulton was then and there in said coal mine so in the prosecution of his duty as aforesaid, said accumulations of gas so then existing in said coal mine as aforesaid, became ignited and then and there caused an explosion and the said Samuel Fulton then and there and thereby suffered and sustained such injury as caused his immediate death.

And the plaintiff avers that the said Samuel Fulton left him surviving said plaintiff, Minnie Fulton, his widow, Annie Fulton, Mary Fulton, Alexander Fulton, William Fulton and Maggie Fulton, his minor children, and only lineal heirs at law to whom a cause of action has accrued for the recovery of damages due to the loss of the life of the said Samuel Fulton.

Wherefore the said plaintiff says that she has sustained direct damages to the amount of Five Thousand Dollars, and therefore she brings this suit, etc.

DONAHOE & McNAUGHTON,
Plaintiff's Attorneys.

(Endorsed:) Filed Jan., 7, 1903, Marshall E. Sampsell, Clerk.

And on to-wit: the 14th day of January, 1903, came the defendant in said entitled cause by its attorneys and filed in the clerk's office of said court its certain Plea to plaintiff's second amended first additional count and amended fifth and sixth additional counts in words and figures following to-wit:

31 *Plea. Filed Jan.* 14, 1903.

Plea to Plaintiff's Second Amended First Additional Count and Amended Fifth and Sixth Additional Counts.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

No. 26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING CO.

And the defendant, by Holt, Wheeler & Sidley, its attorneys comes and defends the wrong and injury, when, etc., and says that

it is not guilty of the said supposed grievances above laid to its charge in the plaintiff's second amended first additional count and amended fifth and sixth additional counts or any or either of them in manner and form as the plaintiff has above thereof complained against it, and of this the defendant puts itself upon the country, etc.

HOLT, WHEELER & SIDLEY,
Attorneys for Defendant.

(Endorsed:) Filed Jan., 14, 1903, Marshall E. Sampsell, Clerk.

And on to-wit: the 19th day of January, 1903, there was filed in the clerk's office of said Court in said entitled cause a certain stipulation in words and figures following to-wit:

32 *Stipulation. Filed Jan.* 19, 1903.

Stipulation.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

In the Circuit Court of the United States in and for Said District.

General No. 26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY, a Corporation.

It is hereby stipulated by and between the parties to the above entitled cause that the plea of the general issue heretofore filed by the defendant in said cause stand as a plea to all counts of plaintiff's declaration not heretofore pleaded to.

DONAHOE & McNAUGHTON,
Attorneys for Plaintiff.
HOLT, WHEELER & SIDLEY,
Attorneys for Defendants.

(Endorsed:) Filed Jan., 19, 1903, Marshall E. Sampsell, Clerk.

33 And afterwards to-wit: on the twenty-seventh day of March, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of March 27, 1905.

Called for Trial and Jury Sworn.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY OF COAL CITY.

This cause being now called for trial, now come the parties by their attorneys, and come also the following jury to-wit: Thomas Seaworth, Oly A. Thompson, D. S. Boodwell, Jos. J. Wallace, Thomas Udy, Louis Bleecke, J. H. Bickelhaupt, Charles H. Usher, W. A. Webber, Ed. E. Fisher, G. M. Tindall and R. S. Reber, who were all duly elected tried and sworn to well and truly try said issue and a true verdict render according to the law and evidence, and the opening statements of plaintiff's counsel being heard with a part of the evidence for the plaintiff when the hour for adjournment arrived the further hearing of this cause is postponed until tomorrow morning.

34 And afterwards to-wit: on the twenty-eighth day of March, 1905, being one of the days of the regular December term of said court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of March 28, 1905.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

Now come the parties by their attorneys, and come also the said jury heretofore duly empaneled, tried and sworn, and the trial of this cause is resumed and the evidence for the plaintiff being now concluded, the defendant's counsel makes the opening statement and a part of the evidence for the defendant being heard when the hour for adjournment arrived, the further hearing of this cause is post-poned until tomorrow morning.

35 And on to-wit: the twenty-ninth day of March, 1905, came the defendant in said entitled cause by its attorneys and filed in the clerk's office of said Court its certain motion to direct verdict, which said motion is in words and figures following to-wit:

Motion to Direct Verdict.

In the United States Circuit Court, Northern District of Illinois, Northern Division.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

Now comes the defendant by Holt, Wheeler & Sidley, its attorneys, at the close of all the evidence offered on the trial of this cause and moves the court to instruct the jury to find the defendant not guilty.

HOLT, WHEELER & SIDLEY,
Attorneys for Defendant.

(Endorsed:) Filed Mar. 29, 1905, Marshall E. Sampsell, Clerk.

36 And on to-wit: the twenty-ninth day of March, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of March 29, 1905.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY OF COAL CITY.

Now again come the parties by their attorneys, and come also said jury heretofore duly empaneled, tried and sworn, and the trial of this cause is resumed, and the evidence on behalf of the defendant being now heard and concluded, together with the arguments of counsel, said jury are charged and instructed by the Court and retired to deliberate upon a verdict, attended by a sworn bailiff, with leave to seal their verdict if they shall have arrived at a conclusion at a time when Court is not in session.

37 And afterwards to-wit: on the thirtieth day of March, 1905, being one of the days of the regular December term of said court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of March 30, 1905.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY OF COAL CITY.

Now again come the parties by their attorneys, and now come the said jury and return into open court their verdict finding the defendant guilty and assess the plaintiff's damages at the sum of four thousand dollars ($4,000) and thereupon the defendant enters its motion for a new trial.

38 And afterwards to-wit: on the first day of August, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Judgment of August 1, 1905.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY OF COAL CITY.

Now on this day come the parties by attorneys, the plaintiff being represented by Messrs. Donahue and McNaughton and Eddy, Haley and Wetten, the defendant by Messrs. Holt, Wheeler and Sidley, and now comes on to be heard the motion of the defendant for a new trial, and the Court having heard the arguments of counsel upon said motion and being now fully advised in the premises, overrules and denies the same, to which ruling the defendant excepts and enters its further motion in arrest of judgment, which the Court also overrules and denies, the defendant further excepting and awards judgment upon the verdict.

It is thereupon considered and adjudged by the Court that the plaintiff, Minnie Fulton have and recover of said defendant, Wilmington Star Mining Company of Coal City, the said sum of four thousand ($4,000) dollars, her damages so as aforesaid assessed, by said pury on March 30th, 1905, together with interest at five (5) per cent. from said date, being the sum of sixty-six and
39 66 100 ($66.66) dollars, making a total amount of judgment of four thousand sixty-six and 66 100 ($4,066.66) dollars besides the costs herein to be taxed and that execution issue therefor and thereupon the defendant enters its motion for a writ of error to th Supreme Court of the United States, the Court fixing the amount of bond on writ of error in the sum of five thousand ($5,000) dollars to be filed within thirty days and to operate as a supersedeas and

sixty days is allowed the defendant to prepare and present its bill of exceptions.

40 And on to-wit: the sixteenth day of August, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of August 16, 1905.

Extending Time to Perfect Writ of Error.

26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

On motion of the defendant's attorney, and upon stipulation filed, It is Ordered that the time for the defendant to perfect its writ of error and file bond be and the same is hereby extended sixty days from August 1st, 1905.

41 On the hearing of this cause the following Exceptions were taken and were allowed by the Court and made of record, which said exceptions are in the words and figures following to-wit:

42 *Bill of Exceptions.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

Bill of Exceptions.

Be it remembered that heretofore, on, to-wit, the 27th day of March, A. D. 1905, the same being one of the days of the March Term of said Court, before the Honorable Solomon H. Bethea, one of the judges of said Court, presiding, and a jury, this cause came on for trial upon the issues heretofore joined herein.

Messrs. Eddy, Haley & Wetten and Donahue & McNaughton appearing for plaintiff, and

Messrs. Holt, Wheeler & Sidley appearing for defendant.

And thereupon, the plaintiff, to maintain the issues on her part, introduced the following evidence, to-wit:

43 EDWARD PIERARD, a witness produced on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. HALEY:

My name is Edward Pierard, and my place of residence is Coal City. I have lived in Coal City in the neighborhood of 20 or 21 years, and am 32 years old. My occupation is that of miner or mine examiner, and I have been mine examiner since 1900, December, I think. I was a mine examiner in January, 1901, and was working for the Wilmington Star Mining Company. I have been employed by that Company altogether in the neighborhood of 15 or 17 years, and as a mine examiner since 1900, in December some time, and have continued ever since in that capacity for the same Company. I had been an examiner about one month before the accident at the mine in which Fulton was killed. I had been an examiner something like about one month in January, 1901. The Wilmington Star Mining Company had two mines at Coal City numbered 5 and 6. At that time I was employed in No. 6. I was called a fire boss and a mine examiner, and I still continue to work for the same Company in the same capacity. In January, 1901, my duties were to examine the mine for the men about to work. I looked to see if the air was traveling all right, if I could find any gas, etc. I couldn't say exactly how long No. 6 had been in operation at that time; four or five or six months, I guess. I couldn't call all the roadways or principal outlets from the mine which were excavated in January 1901. There were main driveways or roads extending from the bottom of the shaft, into the face of the coal where the men worked in the east, west, south and north. These, I should judge, were something like six feet high and six or eight feet wide. After the coal got upon the principal driveways, it was carried on pit cars. The miners loaded the coal at the face of the works. I do not know whether the miners had anything to do with the pushing it out of their rooms; some of
44 them did push it. It was finally put on the roadway, and then by truck carried to the bottom of the shaft and hoisted up to the top. These south, north, west and east roadways, in miners' parlance, were called "headings," and there were four principal headings extending north, south, east and west from the bottom of the shaft. There was also an air shaft.

Q. What was the distance of the air shaft from the shaft proper where the coal was raised, if you know?

To which question the defendant by its counsel then and there objected, for the reason that there was nothing charged with reference to the distance of the air shaft from the other shaft, that being a statutory equipment not counted upon in this action, and because the statute is to be strictly construed with reference to its various provisions, and there is an express reference to the distance of the air shaft from the other shafts which is not counted upon here, the provision being confined to its terms and to its own language. And this objection the Court overruled, to which ruling of the Court the defendant by its counsel then and there duly excepted.

A. I could not say for sure. The distance is somewhere about 300 feet, probably a little more or a little less. There was an opening between the shaft proper and the air shaft; I could not tell how long before January that opening had been made. The headings of the mine were not connected in January, 1901. There was only the east and part of the north that was connected.

Q. What effect, if you know, would the lack of connection have upon the free circulation of air in the mine?

To which question the defendant by its counsel then and there objected, for the reason that there was no charge of failure to
45 connect the various roadways in the mine, and it was not counted upon, which objection the Court overruled, to which ruling of the Court the defendant by its counsel then and there duly excepted. (Question read.)

A. I do not understand that right.

Q. Would the lack of cross cuts or connections in the mine have any effect upon the free circulation of air?

A. Why, there is no cross cuts in a long wall mine, you know.

Q. Eh?

A. There is no cross cut in the long wall mine.

Q. What is the cross cut?

A. The cross cut?

Q. Yes.

A. It is a hole which is into the main road, or something, to get air.

Q. Is there any cross cuts in this mine at all?

A. No, sir.

Q. Well, what connection, if any, was there between the roadways?

A. Why, while it was open, it was clear around; the wall was open all around.

Q. Well, was it open all around?

A. No, sir.

Q. Well, how much of it was there that was open all around?

A. I stated that it was not open.

Q. The east was not open?

A. Well, hold on, you asked me if the east was open?

Q. No, I do not ask you anything about the east. I asked you what part was not open.

A. Was not open?

Q. Yes.

A. Well, the west and the south.

Q. Well, then, what effect would that have upon free circulation of air, the fact that it was not open, if any, at all?

A. You would have to work around until you came to get air into it, open the air up.

46 In event of foul air or gas forming in the rooms that were not connected, the gas could be driven out with a little blower that we have, a little fan and fan engine. Beside a fan, we generally had to use in a hole where there was a little gathering a sack or something to take it down. We used a sack or an old coat or

something, brushing it in so that it would scatter the little gas that was left in the hole. I could not answer the question as to how long it ordinarily took to free the mine from gas after the fan started and after I had gotten into the mine and got to work as fire boss or mine examiner before the men went to work. I never tested it. I generally started the fan in the morning sometime, five o'clock, half-past five, or something like that. The men came down for work at half-past six in the morning; I had the fan started, probably an hour or an hour and a half before they came, may be more, some times. I knew that the mine was free from gas before I told the men in there to work because I examined the same. I went in with a safety lamp and examined it to see if it was all right; the miners generally carry when at work a naked light, a pit lamp pasted on the hat or cap; a safety lamp has gauze all around it; if there is gas in a room or mine, and you go in with that lamp, it would whistle inside. The gas will catch in it, burn in it; it will not blow up. We know from the appearance of a safety lamp whether there is gas in the room or headings in the mine. In case miners go in there with the exposed light, if there is any gas, it would explode like powder.

I was acquainted with Samuel Fulton in his lifetime. I knew him ever since I came to Coal City. He was a miner, a track layer, hand all around, sometimes flagging, sometimes track-laying. He worked for the Wilmington Star Mining Company when I knew him. He started working in No. 6 after I did. He came when we were sinking. I couldn't say how long before January, 1901,
17 that was. He was working there in that mouth before he was killed. I think he was track laying after the shaft was sunk, laying track and roadways for the pit cars to run on. The Company's men laid that track. The track was usually laid through the day, any time. Sometimes it was laid on Sunday. I remember the day of the week when Mr. Fulton was killed. It was on Sunday morning. I was not at the mine the night before he was killed. I left Saturday morning, I should judge about seven o'clock. There was no other fire boss or superintendent at that mine except myself. I next went back to the mine a little before seven o'clock Sunday morning, probably six or seven minutes before seven. An engine operated the machinery or cage, elevator. This engine was in operation when I got there. Moses Capet went with me to the mine. He is still living and working for the Company, but not at the same mine. I saw the engineer at the top of the mine when I got there; I can't tell which one of the engineers; there were three; I think it was Bromley. Johnnie Wilson was mine manager at that time. He was not there when I first got to the mine. I passed Mr. Fulton on the road. He was going to the shaft. I saw Mr. Schmitz at the shaft. When I got to the shaft I sat down two or three minutes. Then I saw the mine manager, Mr. Wilson, coming. I don't think there was anyone with him. It was pretty near seven then, and we picked up and went down, me and Moses Capet. After we got down, we threw off our coats, put down our buckets, and started in the south road.

Mr. HALEY: Have you got that map here, Mr. Sidley?

Mr. SIDLEY: I have some blue prints which are the same thing. (A blue print was then produced by Mr. Sidley.)

Q. First, I will ask you to look at that map. I assume the top of this is north, and, after having examined it, state whether
48 or not it represents substantially the situation at the time Mr. Fulton was killed?

A. Yes, that was about the right thing.

The top of this is north. Capet and I went south; that would be into this heading with the two cross roads. I don't call them cross cuts. The cross road is a place to put some tracks, and the cross cut is a place for air. We didn't have any cross cuts for air in this mine. Those crossings on the east are rooms opened up; they are not through cuts. Capet and I started right from this south heading to dig holes in order to get air boxes so as to get fresh air in to the men that were working in that direction that day. Capet and I were working there. Besides passing him on the road, I saw Mr. Fulton on top of the shaft. When there, he said that he wanted to pick out a car-load of ties, and Mr. Schmitz went and helped him. He didn't go down as soon as I did. Me and Capet went down first.

The fan that was operated for the purpose of clearing gas out of the mine was at the bottom of the shaft; I passed right beside it to get at the bottom of the mine; it was not then in operation. I did not start it nor try to start it. I knew at the time there was gas in the mine in that section; always had some in it. I didn't know that Fulton and Schmidt were going into the section; into the west. I knew they were coming down into the mine to lay switches somewhere. I didn't make any effort to get the gas out. The fan is operated by steam generated at the top, but not by the same engine that furnishes power to the cage or elevator. Very likely the same boiler makes the steam. The steam is communicated from the boiler to the little engine that operates the fan from the bottom by a steam pipe coming along all the way down the side of the shaft. In order to start the fan in operation, if there was steam in the boiler at the time at the top of the shaft, I would have to open up that
49 valve; a valve at the engine and one at the pump; the fan was right close to the engine. The apparatus used for the purpose of starting up the fan letting on the steam was a wheel; that wheel was there all the time. The simple opening of that valve by turning the wheel would start the fan; we would have to help the engine, turn to get her started; we would not have to do anything else. If the pump had been stopped or the fan had been stopped from the Saturday night before, the steam was shut off at the pump in order not to have water from the condensed steam rise from the pump to the fan. There was a valve at the pump. The valve was all right with the exception of the wheel; there never was a wheel on there; there was a place to put a wheel; Mr. Wilson put the valve on; there was no wheel to it; it was started with a wrench; if you wanted to tighten it up, you tightened it with a wrench. Suppose you wanted to let the condensed steam out in order to get condensed steam to your fan, you just opened it up with your wrench, started it,

and operated it with your finger. We didn't get live steam to that fan without opening up the valve and letting out the water or condensed steam. I don't know where the wrench that ordinarily opened that was that morning. I don't know how it was opened up that morning at that particular valve; I think Mr. Wilson opened it up; I couldn't say I saw him. I think he got that wrench on top. I didn't make any effort to find the wrench that I know of. I didn't do anything to open up that valve to let the water in so that steam might be got to the fan. I saw Mr. Fulton down in the shaft that morning. I was in the south road when he came down. I could see him from where I was. Mr. Wilson was with him. Schmitz came down ahead of him. Schmitz took down some rails, I could not say what it was, he left them at the bottom of the shaft and belled the cage away; that is, he gave a signal and it went up.

50 Then a carload of ties came down. Fulton was not down there before the car of ties came down. Mr. Schmitz pulled the car of ties off the cage and belled it away again. Then Mr. Fulton and Mr. Wilson came down with some switch pointers. A switch pointer is a short rail for a switch. They had them on the bottom of the cage, and after the cage came down they put them on the top of a load of ties, on the pit car. The four of us—five of us—stayed there and started the fan together. There was me, Capet, and Fulton and Schmitz and Wilson; I stayed right there with them and turned the wheel; not the wheel of the fan, the big wheel. That is all I did. I couldn't say now what Wilson was doing. Capet was right there. I don't know that he did anything except to be there. Fulton and Schmitz were all standing there. After the fan was started, I walked in the south room. Schmitz and Capet walked in with me. I saw Wilson walking in the end of the south road. I couldn't say how far down toward me Wilson came. He was on the plate when I left. After he got onto the south road, he didn't get up quite as far as where I was. Schmitz came right up where I was and stayed there two or three minutes, and then he went back to the bottom.

Q. He was at the bottom all that time, wasn't he?

A. He was at the south road. I call the bottom, that is, the plates. He went back to the shaft and I stood in the south road. Mr. Wilson called him when he went back.

Q. What did you hear Wilson say to him?

To which question the defendant by its counsel then and there objected on the ground that conversation between Wilson and Schmitz, who was not a party to this suit, is not competent in this action; that it was not a direction by Wilson to Fulton, but by Wilson to Schmitz.

51 The COURT: Was Wilson present and did he hear him?

Q. Where was Fulton when Wilson called Schmitz?

A. He was on the plates.

Q. How near was he standing to where the others were?

A. Well, I couldn't say; within twenty-five or thirty feet, something like that.

Q. Was he as near as you?
A. No.
Q. Did Wilson speak loud enough so that he could be heard?
A. Heard him hollering to Schmitz; that is all I heard.
Q. He hollered out to Schmitz?
A. Yes sir.
Q. And he and Wilson were in near the shaft at that time, is that right?
A. Fulton was more in the west. He was on the end of the plates or bottom, sitting on the cab.
Q. And how near to Wilson?
A. Well, I should say about twenty feet; twenty or twenty-five.
Q. How far were you from Wilson?
A. Thirty or thirty-five feet.
Q. Did you have any trouble hearing Wilson?
A. No, I was in the road.
Q. I understand all that; the other man was in the bottom?
A. There was an awful racket with this fan; while the fan was going, the engine.

The COURT: Have you shown who Wilson was?
Mr. HALEY: I have shown he was the mine manager.

Q. Wilson was your mine manager, wasn't he?
A. Yes sir.
Q. He had the mine in charge, boss of the mine, wasn't he?
A. Yes sir.

The COURT: What power and authority did he have? Hadn't you better show that?
52 Mr. HALEY: The statute fixes that, your honor.

Q. Under whose direction were you all working or mining; as far as you know, who was the boss?
A. Mr. Wilson.
Q. And he was then in the employ, you say, as mine manager for the Coal Company?
A. Yes, sir
Q. And had been for some time before that?
A. Yes, sir.

Mr. HALEY: Now I think I have a right to ask what he said?
The COURT: Do you renew the objection?
The defendant by its counsel then and there renewed its objection to said question, on the ground that unless it appeared that Fulton heard this command given, or unless it was given to him, then that a conversation between Wilson, the manager, and Schmitz and other workmen, would not be competent in this action; which objection the Court overruled; to which ruling of the Court the defendant by its counsel then and there duly excepted.

Q. What did you hear Wilson say to Schmitz when he hollered at him?

To which question the defendant objected on the same ground as the last previous objection, which objection was overruled; to

which ruling of the Court the defendant by its counsel then and there duly excepted.

A. He said, "You will work with Fulton to-day," something to that effect, something like that, I couldn't say exactly now.

Then Schmitz came walking out. I have no better recollection of the words he used. When he spoke to Schmitz that what I have given you now. He said he would work with Fulton to-day; that is that I understood. I was a witness before the Coroner, and
53 that is what I then stated was said by Wilson, I think. After that talk with Schmitz he left the room where I was, and I didn't see anything of him after that up to the time of the explosion. After Schmitz left, Wilson was in the south road, in the ways, the south road. That is where I was. I was right up here some place (indicating on the blue print). I judge I was about thirty-five or forty feet south of the shaft opening Wilson was on the south end of the boxes. We had boxes there propped up for to put up. He would be probably twelve or fourteen feet; something like that, sixteen feet in from the snaft opening. Wilson was in the south room when he hollered this, and then Schmitz left. The next thing I heard was a little while after an explosion occurred; I felt it, it knocked me down.

Q. How far were you from where you found the cause of it was?

A. Well, I couldn't say exactly. It would be forty or fifty feet south, and there was no whistle. It would be, I don't know, seventy-five or eighty feet, probably one hundred.

I was in the south road about forty or fifty feet from the point of intersection of the south roadway with the shaft. After the explosion occurred and I was able to get up, I looked for a match. Mr. Wilson lit the match for me, and lit his lamp, and he walked out and I followed him. I came on the road here on the main shaft, and then up the west; up the south roadway of the westerly roadways through the mine. When I went into that westerly heading, as soon as we got a light, Mr. Wilson got a light, we heard Paul hollering on us; Paul Smith. His name was Schmitz. We met Schmitz coming out, I couldn't say, seventy-five or eighty feet, probably, from the bottom, may be a little more, west from the main shaft. We found Sam
54 Fulton probably twenty-five or thirty feet further up, something like a hundred feet, I suppose, eighty or one hundred feet west from the main shaft; I never measured I saw the car that they had up there, and the ties and the points and the switches. Fulton was lying on his back when I got up there, and he was dead. We picked him up and carried him out through the main shaft. The wall of the mine was all right; the boxes up on ahead was broken, some of it smashed. The car was all right, off the track. Schmitz was burned. I could not tell you how near to the place I found Fulton. It appeared to me that the gas had taken fire. I was thirty or forty feet from the main shaft south, and found Fulton about a hundred feet west, so that taking it around and following the angles about one hundred and forty or one hundred and fifty feet, it knocked all of us down in that heading. This was on Sunday morning, January 27, 1901.

I could not say about what time it was in the morning that I went down in the mine, about seven o'clock; I should say it was about twenty or thirty minutes after I got down into the mine when Wilson finally came down. From the time Wilson came down until he came back and got the monkey wrench to open the valve to let the water out for the starting of the fan, was a few seconds. He just went up and down again; I couldn't say how many minutes. I recall being a witness before in this case. I couldn't say how near to eight o'clock it was that morning before the fan started. My best recollection and judgment as to the time is that I don't think it would exceed much after half-past seven, around thirty-five minutes. It was just a very short time after the fan started until after the explosion, something like five minutes. No one to my knowledge had been up the west heading of the mine that morning ahead of those men. I never tried from my own experience how long it takes after the fan starts to dislodge the gas and get a current of fresh
55 air in the mine. I never tested. I couldn't say how long it would take after the fan started before you let the men into the mine before the gas was out. My best recollection as to the length of time is that sometimes I started at five, sometimes half-past four, and sometimes a little after five; not very long after five. I couldn't say how long I have known gas to remain in those rooms after I started the fan, by an actual test. Generally when I went in, it was all clean except this hole.

Q. Well, have you known it to stay there a half hour?

A. I couldn't say, you mean after I started the fan?

Q. Yes. Well, as a fire boss, was it not part of your duty to learn something about that thing?

A. To see that the thing was clean for men in mining.

Q. You did that by the lamp, didn't you?

A. Yes, sir.

Q. How long a time did it take after you started the fan till your test showed there wasn't any gas in the mine?

A. I couldn't tell, I never made a test. I went up there to see to make a test of it.

Q. Well Sunday morning this man was killed you never made a test of any kind?

A. No, sir.

Q. Why didn't you make a test of the mine that morning before those men were allowed to go in?

A. I was not there for that purpose that morning.

Q. Why weren't you there for that purpose?

A. I was on a special job; I was on for putting those boxes.

Q. Who told you that?

A. The mine manager.

Q. That you were not to make a test?

A. No, he didn't tell me that.

I went out that morning on a special, another job. The gas would not be taken out of the mine unless the fan would go. The
56 mine manager was there. Wilson did not tell me he would look after the gas that morning. No one told me they would

look after it. I was under the boss that morning. There was no sign or indication placed upon the west headings or headways, roads, indicating that they were unsafe or that there was gas. When I found gas in the mine that was not dislodged by the ordinary operation of the fan, I took it out and reported it to the boss, the mine manager. I was in this westerly road before the Sunday morning that Fulton was called every morning.

Q. Did you ever find gas in there?

A. Yes, sir.

Q. Did you know that gas was in the habit of communicating here?

A. Yes, sir.

Q. Did you know it would be there unless it was taken out.

A. Yes, sir.

I can tell you about the dimensions of the vertical shaft at the bottom. This bottom of plates, this square that is indicated here (on the blue print) is about fourteen feet square, I think; I never measured it, I could not say for sure. The air boxes were in the south; on this square place. I don't think there was anything except this car of ties was partly on the west. This part marked "main shaft" is an opening inside this fourteen foot square. The opening where the bucket runs up and down, or the elevator, was I think fourteen or sixteen feet long and five feet and something wide, that is, without the partition that is between; there are two partitions and two elevators used for hauling up the coal and material from the bottom of the mine. On this map, the westerly end of it, there are some things indicating the large openings. These were in existence at the time of the death of Fulton. I have a distinct recollection of that. The other artificial means of ventilation of that, except the fan, at the time of the death of Mr. Fulton, was the air coming down the air shaft. It came down and came up the main shaft. There was no fan in the air shaft, and nothing in it except the opening from the bottom up. This could not help out the west roadway at all.

57

I last saw the monkey wrench that was there, that we operated the valve with, on Saturday morning when I left the shaft. I couldn't say whether it was there the Sunday morning when this man was killed.

Q. Do you know whether it was or not?

A. It was not, because John went up for another one.

Q. When you found that that monkey wrench was not there, did you order the men out of the mine?

A. No sir.

Cross-examination by Mr. SIDLEY:

On direct examination I stated that the air came on the east side of the mine down the air shaft and up the main shaft, and that created a current. There was a constant up current in the mine shaft on account of this circulation coming through from the east. This constant up draft from the bottom of the mine also affected the air over here on the west side of the mine a little. The up current in the main shaft would affect the air in the west shaft up to the

empty track. The empty track is that road cut through the west. I mean the north road of the two parallel west roads that comes down into the main west track. Up that far that up draft would keep the air clear enough in that part of the west part of the mine so that a person could go in there without any artificial draft by fan or otherwise. Beside this, there was those steam pipes which helped create a draft from the bottom of the mine. The heat, you know, would cause a draft, the steam going down to the bottom in the pipe came onto the fan. The condition of the air at the bottom of the shaft when the fan was not working was all right; it was always good, and we needed no artificial ventilation for the bottom of the shaft. This extended also into the south shaft part
58 ways; pretty near into the face, with the exception when they were working for a day or so would stay by. The air in the south shaft the Sunday morning when Capet and I and Schmitz and I were in there, was all right. We didn't have any artificial ventilation there; we were going to put in those boxes. By the face I mean right at the end as it has been worked. The fan or blower that was operated by the engine at the bottom *at* took care of the west roadway of the mine, and also of these branches up at the end of the west entry of the west roadway. The fan made good air in there after it had been working for a sufficient length of time. I couldn't say how long I had been working in this west roadway before this accident occurred, five or six months, probably a little more. I inspected regularly in that west roadway before the men went to work. I began inspecting a little after they begun to run the west roadway. I think they were in about half-way from the plates when I got on mine examiner. By plates I mean the bottom of the shaft, the main shaft. There is an iron plate there. There is an iron bottom plate there. Before I began going in for inspecting the air they had proceeded in that roadway half way to the empty track, that is, where the empty track comes down into the main track, or half way from the shaft to the roadway; up to that point the way was all right. I began examining when that west roadway had been put in half way from the bottom to that empty track. The fan was not put in at that time. There was a little gas then in the west road. I always found gas in the west road. The fan was put in when they had got past that empty track a little in that west road. Up to the time that the fan was put in, there was always gas in the west entry, and we worked in more or less gas there until the fan was put in. I could not say whether Fulton worked with me in there those days before the fan was put in
59 or not. I know he used to be on that road before the fan was put in. He was laying track in there. His business in the mine was track layer. There was nobody else laying track beside Fulton that I know of. I think Fulton laid pretty near all the track that was laid in the mine. It was a couple of months, anyway, after the fan was put in before the accident occurred. After the fan was put in, there were twelve or fourteen men working in that west entry every day for quite a long while. For two or three months they were driving those roads in order to get the mine opened up. In order to get the air to circulate all around. They began

to sink this shaft No. 6 in April or May, 1900; I couldn't say for sure. There were three shifts of men at work there from that time on, four in each shift. Three shifts worked from seven to three, and three to eleven, and from eleven to seven, eight hours a piece. They were sinking a mine. I mean by sinking, digging down to get into the coal. When they got down to the bottom, they began to open up the shafts. In opening up the shaft in the bottom of the mine, they cut out the coal and stone and make roads. I was familiar with the work that was being done and planned in the bottom of the mine before the accident. They were working in order to get the mine opened out the same as it is on the east side here, cutting narrow work; cutting openings clear around to make a circle all around the mine. The east side of that mine upon this plat had been opened up at the time of this accident to right there on the east second road (indicating). There was a current of air in the east part of the mine as far as that was opened out. There was more to do to the east side before it was finished back southeast. What was to be done here in the beginning was to come through onto this southwest road. This spur road here was to be brought west to connect with this branch running east. The object of
60 that was to get air to travel all around the mine. It was our object in working through the west side of the mine to finish it up in the same manner. It is to be in order to get air to travel ad around. It was our purpose to run our roadway near there which runs northwest, to run it westerly to connect with the branching road which was running northeast. It was our intention to connect this south spur road here running easterly over here with this south road, that is what I mean by saying that when that was done the mine would have a circulation of air. At the time of the accident, the work had progressed only so far as shown upon that plat. There were three shifts on that work prior to the accident. We were not mining coal in the mine at that time; driving roads in order to open up. The stuff we took out was fetched on top. I think they burned it in No. 5 most of it. The sort of material we encountered in there making the road was coal and stone and sulphur.

There is a person in the mine known as a miner. The miner has anything to do that is in the mine. He is an all around man. Beside laying track, I believe Fulton timbered some. He was sinking in this mine. I couldn't say when he began to work on this shaft 6 before the accident; it must have been two or three months after we got started. June or July sometime, 1900, some thing like that, probably before, I couldn't say. He worked from that time to the time he was killed. He was sinking at first, and when *when* he got down he was a track layer, a track man.

Q. You said there were no cross cuts in this mine?

A. No, sir.

Q. Why were there no cross cuts in this mine?

A. This is a long wall mine.

Q. What do you mean by a long wall mine?

61 A. There is no cross cuts in a long wall mine, it is all circular all around.

Q. What other kinds of mines are there?

A. Room and pillar, there is where you get your cross cuts, big veins.

Q. Does the long wall mine never have cross cuts in it?

A. No, sir, they run where there were doors on the cross cuts.

Q. The room and pillar mines are the ones that have cross cuts?

A. Yes.

Q. What is the difference between a room and pillar mine and a long wall mine?

A. The difference?

Q. Yes, can you describe a room and pillar mine?

A. A room and pillar, there is two entries driven together.

Q. Parallel?

A. Yes, and there is where the cross cut comes in. When they go in so far, they have to put a cross onto the other one in order to have the air come around. That is what they call a cross cut.

Q. Do they take all of the coal out of the room and pillar mine?

A. No.

Q. What do they do with that which is left sitting there, what for?

A. So as the roof won't come down, I guess.

Q. You mean for support?

A. Yes.

Q. For pillars?

A. Yes.

Q. Then, if I understand you, a room and pillar mine is one where they start from the bottom and run two parallel shafts?

A. Two roads.

Q. Two parallel roads, and after they get down a certain way in order to get air circulating, they cut a road across?

A. Sixty feet.

62 Q. Every sixty feet?

A. Yes.

Q. And that is what they call a cross cut?

A. A cross cut.

Q. And what is its purpose?

A. In order to get air to its face.

Q. After they have gone in sixty feet and put in a cross cut, then what do they do?

—. They go in sixty feet more and put in another cross cut, put in a stopping to this cross cut.

Q. A what?

A. A stopping, that is, follow this up, this first one. The first cross cut follows in so as the air would travel to the next one.

Q. And how do you follow it in?

A. With stone, some brick, some lumber, some board.

Q. And what do you call it?

A. Stopping.

Q. A stopping?

A. Yes.

Q. Does a stopping always accompany a cross cut in mines.

A. And there is another cross cut at the face. This first one has to be filled in.

Q. Then, as I understand it, they go in sixty feet with two parallel tunnels.

A. Yes, sir.

Q. Then they put in a cross cut to let the air through?

A. Yes, sir.

Q. Then, if they want to go on sixty feet further and put in another cross cut, they follow in the first one.

A. Yes, and allow the air to go right to the face.

Q. Then the air would only go into the first cross cut and go back?

A. Yes, sir.

Q. And the stopping is what they put in the first cross cut to shut it off?

A. Yes, sir.

Q. Do they have cross cuts and stoppings in long wall
63 mines such as this?

A. No.

Referring to this valve, which has no wheel, it was started with a wrench, just to give it a start, and then started with your fingers; open it up with your fingers. The wrench was used to shut her tight in order not to have a condensed steam all along the pipe from the pump room to the fan engine. It was just as easy just the same to start it with the wrench as it was with the wheel and then use your fingers to finish it; it was always on. That was the regular way of starting this valve while I was in the mine. It was put on that way, and had been in that condition ever since it was put in.

When I went down to the bottom that Sunday morning about seven o'clock or a little before, I first took off my coat and went into the south road. I couldn't say how long I remained in there; till the other fellows came down. By the other fellows I mean Fulton and Schmitz and Wilson. Then we walked out to the bottom and the fan started. Five of us were there at the bottom when the fan started. When the fan was started I walked in the south road again. Fulton was then on the plates by the engine; the little engine, sitting on the back of the car with his hands folded this way (indicating). The engine was situated right there (indicating on the blue print), the first square west of the south entry in the bottom. The fan was right next to it; it was only a little distance between, the next square place at the west of the first one. Schmitz went with me into the south entrance. We went, I should judge, about 40 or 50 feet. I stopped right at about 50 feet, and Schmitz stopped with me. I was digging a hole in the wall on the east side of the south roadway to put in a stick in order to get those air boxes in. Schmitz was not helping him. He just followed me in after I went in there.
64 These air boxes are four sides and open at the end, the boards 12 inch, I think, or 14 inch, in order to drive air into they were used by the fan to drive air through; that is, you make a continuous row of them end to end. The fan drives the air through these boxes all around. They are used to convey the air right to

the face. I mean by the face the end of the workings, at the end where they are working at it. They are air boxes in all mines where they are not completed. In the new mines they generally have them, and when a circulation is all around they have them take them out. Capet followed into the south entry too. He was the man with those boxes. He must have been in 16 or 18 feet, something like that. Wilson was right along with Moses. Moses was cutting, I think—Mr. Wilson was holding the stick for him. Capet came into the south entry about five or six seconds after me, just followed in. I don't know how long after that Wilson came in; he was with him. I couldn't say. When I happened to turn around and saw them all in there, he was in; seen him about four or five minutes afterwards. They had pit lights. I had a pit light and Schmitz had one. Wilson was in the south road with Capet when he called to Schmitz. He was at the place where he was working with the stick. Schmitz came right out when Wilson called him. He passed Wilson; I seen him going out. Nobody went with him that I know. I saw Wilson and Capet after Schmitz left me. They were right there in the south road. I couldn't say how long after Schmitz left before the explosion; four or five minutes; three, four or five minutes. Between the time that Schmitz left me and went out, neither Capet nor Wilson went out of the south entry that I know of. I never seen them go out; I saw them working there. He was holding the stick for Capet. When the explosion occurred I was looking for a match, going through my mit; looking for a match. I didn't find one; Wilson laid one before me. Wilson was in the south room when the explosion occurred, thirty or forty feet from me. Capet was a little on this side of me in the south entry. After the explosion I went up into the west entry, I should judge about eighty or a hundred feet. I first met Schmitz and gave him Moses, and he walked away with him, and I went behind Wilson and got Fulton. I found Fulton about probably twenty or thirty feet this way from where this empty track road came into the main west road, that is, twenty or thirty feet east of there. I didn't go on beyond that point at that time, not that day. I went in next on Monday. At that time I went to the end of the boxes; to the face. The boxes were broken on the end road, that is the first one, the one marked "A" in the plat. I found some at the point where the road runs into the west road. They were all broken on that road marked "A." I think there was one beyond that point west in the mine, and one broken where this road A comes into the west road, and where the empty track road came in they were broken into splinters; it was the explosion that broke them. The walls were all right, solid walls. On the track there was a rail lifted, twisted. The car was off the track; on this side of the empty track, east of this road which is marked "B" down here (referring to the plat). The west part of the mine beyond this empty track B was on an up grade. The ascent began about half way on that west road, some ways east of where this empty track B comes into the west road. It was going up from there on. The tracks were laid at the time of the accident in the West entry to the face in a straight road. That road is marked "C" on this plat

toward the west end. The rails had been laid to the face, that is, to the very end of that straight road. They had also been laid down both sides to the road, down this road marked "D." There they had been laid up to the face with the exception of the switch coming back east.

66 Q. (Referring to the plat.) And that little turn out to the east there was in the track laid in there, there was no switch there, was there, any track up this road marked A up to the northwest?

A. Yes, sir.

Q. Was there any beyond there in the mine in the west?

A. No.

Q. Around the face?

A. That was all; no.

At the time of the accident and shortly prior to that, my regular hours in the mine were eight hours at night, from half past ten, eleven o'clock to seven; I didn't go in alone; Schmitz was working with me at the time. While I was on duty in the mine during the night, I was working at all kinds of work, anything that was to be done. I started the fan in the morning about half past four or five o'clock before the fan was started, some times we were driving on the road, sometimes timbering. Before the men came down I went in to test in the west entry; to examine the mine. There was no gas anywhere except in the west entry. There had been gas in there a long while; four or five months; three or four months. I never made a test to see exactly how long it took the fan to clear out. I generally went in with a safety lamp, always at six o'clock or a little after. I don't know just what time the air changed from bad to good, or when the gas was all out. When Schmitz and I were in the mine there during the night before the men came down, we worked all over the mine; sometimes in the west entry as well as in the other entries. At the time of the explosion, I was a certified mine examiner. I got my certificate at Springfield, and have it with me.

(The witness then produced a certificate, which was offered by counsel for defendant for identification as "Defendant's Exhibit A.")

67 Q. You brought the question of these patent lamps. I will ask you if that is a lamp such as you miners wore usually at that time, what you describe as a naked lamp (showing witness a lamp)?

A. Yes.

Q. And you each of you had one of those at the time of the accident, did you?

A. Yes.

Q. And were using it in the mine?

A. Yes.

A safety lamp is a lamp with gauze all around it. It stands that high (indicating), and you go in and examine a mine with it. If there is gas, it would not light. It will show you in the lamp. That was the light that I used mornings for testing. There was one of

those lamps in the bottom; right in the pump road, that is the north road; right on the end where it came into the shaft.

I had known Fulton since I came to Coal City; that is twenty years, any way. When I first knew him he was working at the old shaft for the Wilmington Star Mining Company; I don't know the number. Before the accident I worked with him in No. 6, the mine where the accident happened, in the day and not at night. I had worked with him when I was working night and day. I ceased working during the day and began night work in December sometime, 1900, after I got my certificate. I believe it was about that time this blower fan was put into the mine, and after the fan was put in I began my examining work at night. Previous to that I had worked in the day-time. As to the habit of working Sundays, I believe sometimes we worked Sundays. We worked Sunday right along when we were sinking. Beside that of mine examiner, I had to do any kind of work that we was ordered. The mine examining part of my work consisted in examining the mine in the morning so the men could come down right after. That did not take a great while. Beside that, I cut in those roads, put in boxes some-
68 times. On the Sunday morning when the accident happened, I went down into the mine to put in those boxes in the south, and I examined some on the west. That was the only work I was directed to do on that morning. I hadn't worked Saturday night. I worked Friday night and left Saturday morning at seven o'clock. There was no regular shift of men working in the mine on this Sunday that I know of. While I was working in the day time, I had work with Fulton in all parts of the mine; in all the roadways; I am not sure whether I had been in the south roadway with him; I don't think it was in at that time. I think I have been in other roadways with him; I couldn't recall.

Redirect examination.

By Mr. Haley:

I couldn't say how many men in all worked on one shaft in this mine in January; somewhere around forty; thirty-five or forty, I guess altogether; there were not three shafts at that time. After the shaft had been sunk, there was a little while there was three shifts in cutting those roads. In January I think there was only one shift, that was a day shift. I couldn't say how many men were employed on that shift. Something like thirty, I guess, worked down below in that mine. They were driving those roads.

Q. Were they mining coal?

A. Cutting those roads.

Q. Well, was that mining?

A. We call that mining, yes.

Q. They then mined the coal and took the earth out, and the coal then fell down, and they loaded it on the cars and sent it off?

A. They cut it, they didn't undermine it at all.

Q. Well, then, they cut it; they did the ordinary mining.

A. They did the narrow work. What we call the narrow work in a new mine. Opening up, getting ready.

Q. Was it cutting out and digging coal?

A. Yes, it was taking out coal; yes.

69 Q. How long had they been digging coal out of that mine before the accident?

A. I couldn't say.

Q. Well, can you tell about how long?

A. Whenever we hit the bottom we sent coal up.

Q. How many months?

A. Probably four or five; three.

I believe there was a sidetrack leading into the mine on top. I think there were one or two flat cars run in by engines. Some coal was laid on those flat cars and taken away. I didn't pay any attention to the number of cars a day out of that mine before the accident. I had nothing to do with that.

The air shaft or escapement shaft would help at the west roadway, would draw air from that or purify the air in it up to this empty track. I couldn't say what the distance is from the escapement shaft to what I call the empty track. I don't know exactly how far the air shaft is from the main shaft. The main or principal shaft is between the air shaft and the end of what I call the empty track. I know that the escapement shaft would help out the west roadway because it was always—it was clear in there right along, and always a little would draw off, you know, with the head being opened out, and this end beside the steam pipe that was in the shaft. It is true there was gas in there all the time past this road past the empty track, and that we had to put in a fan to clear that roadway.

We found the body of Mr. Fulton that morning right here some place, I should judge about thirty or forty feet, twenty feet from the west end of the empty track. I found some gas in there before we had our fan at the point where this man was killed where it started to rise, but when this was opened out it was clear. The way we got it out of there, we brushed it at the time. We did not start our fan; the fan was not in at that time. After the fan was in we depended on that for getting it out, partly.

70 Q. Can you measure upon a map that has got a scale to it?

A. No, I could not.

Q. Will you measure the distance from the escapement shaft on this plat; there is an escapement shaft there which is round west of this east round way. Measure from here and tell the distance if you can. Can you scale it, twenty feet to the inch? Can you tell us now the distance after seeing the rule placed on the map?

A. Three hundred and some feet.

To which question and answer the defendant by its counsel then and there objected on the ground that the admission of this evidence for the purpose of showing the distance between the main and the air shaft was improper as not being counted upon in the declaration.

The Court: Of course this is limited to the purpose of showing whether there was ventilation.

Mr. Haley: That is all it is for in the world.

The COURT: And it will not be considered in any other way, gentlemen.

The distance from the pump house to the elevator and the shaft is sixty feet, I guess; something like that. The safety lamp was not in the pump house; it was in that road about half way; about twenty or thirty feet from the bottom, from the plate. It was kept hung on a timber; there was a nail in the timber and it hung on. It was not kept lighted all the time.

I said in my cross examination that a wrench was just as serviceable as a wheel for turning the valve upon the water pump. A wheel would stay on there all the time and be so fixed that you would find it there. The wrench was always there. It was not left attached to the faucet or plug.

71 In order to mine coal you have to keep all the time making roadways to open up.

Q. And the older a mine is, or the more you mine out of it, the greater amount of roads you have; is not that it ordinarily?

A. No, we generally fill in the old ones.

Q. Yes. Well, you have made them any way?

A. Yes.

Q. Now, you were asked about the difference between a long wall mine and a room and pillar. Are there any room and pillar mines in the Wilmington field?

A. I believe there are. I think the Cardiff that belongs to her district; I don't know.

Q. Whether you have a long wall mine or a room and pillar mine depends entirely upon the judgment of the man who opens the mine, whether he will have one or the other.

A. No, those small veins are long wall mines.

Q. A small vein is a long walled mine?

A. Generally work them that way; they all work them that way, the working along a small vein.

Q. Well, what is there to prevent the other kind of a mine? The pillar mine with a small vein as well as with a larger vein?

A. It would not pay them.

Q. It don't pay them. It is a matter of judgment in the mining.

A. I don't know how. We have stone to build in the small vein and there is none in the big vein. Therefore you could not work on the long wall system the big vein.

This coal mine is situated in Grundy County, in the State of Illinois. I knew Schmitz for a long time in his lifetime. He is now dead.

72 Recross-examination by Mr. SIDLEY:

The safety lamp was always left hanging on that bottom when it was not in use; that was its regular place. It was always ready for use. The taking out of that coal was merely incidental to our cutting the roadways. We were not in there mining coal in the regular sense of the word. We were cutting roads. Our object in that mine in working at that time was to cut roads. In the process of cutting roads we cut through some coal veins, also through some

rock and other stuff in the mine. Everything we cut through was taken out and sent up above.

Q. And is that the sense in which you mean you were mining at the time?

To which question the plaintiff objected as incompetent, irrelevant and immaterial; which objection the Court sustained; to which ruling of the Court in sustaining this objection the defendant by its counsel then and there duly excepted.

MINNIE FULTON, the plaintiff, produced as a witness in her own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. HALEY:

My name is Minnie Fulton. I have lived in Coal City since I went there as a girl about thirteen or fourteen years old. I was married seventeen years ago in October, at Braidwood. My husband's name was Samuel Fulton. He died on Sunday morning, the 27th day of January, 1901, in the shaft. Mr. Fulton and I had five children; all of them are now living. Their names are Annie, Mary, Allie, Willie and Maggie. The oldest child must have been eleven past when my husband died. Her name is Annie. The youngest one was fourteen months old. There were two boys and three girls. My husband and I had a house and he lived with the
73 children and me, at Coal City. His business was track laying most of the time for years up to and before the time he died. He was working for the Wilmington Star Mining Company, and had been ever since I married him; I don't know how long before. About the time of his death he was earning different prices. When the miners were raised, my husband was raised, and when they were broke in wages, my man was broke in wages. I know he has had as high as $2.25, but it seems to me that it was $2.28 a day. I think when he died he was getting $2.25 if I ain't mistaken. I couldn't say how long a time he had been earning the wages that I have stated. I know he was getting the same price for quite awhile before his death. He always worked steady unless he was sick or so. He was sick very little. My husband supported me and the children. He was thirty-six years old at the time of his death. I last saw him on Sunday before he was killed about fifteen to twenty minutes after six. I next saw him about twelve o'clock. The mine where he worked was I guess a mile, if not more, from where we lived. I saw him in my house after he was killed.

On pay day at the mine after Mr. Fulton was paid he brought his money home and gave it to me, and I used it for paying my bills and things for the family.

JOSEPH HENDERSON, a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. DONAHUE:

My name is Joseph Henderson. I have lived at Coal City for nineteen years and three months. My business for several years past

has been mining. I remember about some difficulty and some men killed in mine 6. I was then County Inspector of Mines. I knew mine 6 of the Wilmington Star Mining Company. The day on which Mr. Fulton was killed was on Sunday, 27th of January,
74 1901. I had visited that mine before that time. I observed coal coming out of that mine four months before the 27th day of January, 1901. There were railroad tracks laid up to the mine and connected with the main line of the railroad. The shaft was in operation and I saw coal hoisted by regular hoisting engine from the bottom of the shaft and loaded onto railroad cars. I observed that four or five times; five or six times. My business called me to that shaft frequently. My duties as County Inspector—mining inspector.

Cross-examination by Mr. SIDLEY:

I don't know that I remember particular times that I visited that mine, four or five times prior to January 27th. I was appointed County Inspector September 10, 1900. The last time before January 27th that I saw coal taken out of the mine was about the 22nd or 23d of December.

The next time before that was in November. The other time was in October. I have not got the dates. I don't remember the dates. My report will show. I saw this coal on top. It was mine run coal. Some of it was lump and some slack. It was taken out of the west, the south, the north and the east parts of the mine. I was down in the mine, saw it pushed, and followed it up. I don't know that I followed it up the shaft where they were loading, but I saw it put on the cage and saw it sent up to the top. I don't know where it was taken from the mine. So far as each individual lump of coal was concerned, I could not tell what part of the mine; but I know they were taking out—they were taking coal out. I am not speaking about particular carloads.

Q. Taking coal, you say? Coming up to the 22nd of December, 1900, from what part of the mine was coal taken out?

A. Well, what was dumped on the top when I was there, I could not tell what part it was taken out from; what was on the
75 platform I could not tell.

Q. You do not know of your own knowledge what part of the mine that particular coal came from?

A. Decidedly not.

Q. You do not know what part of the mine any of this particular coal came from?

A. It was mined down there, but the particulars, probably, I don't know. I know that the coal was taken from that mine.

Q. You saw coal which had been taken from the bottom of that mine?

A. Yes, sir.

Q. That is all I understand you know of your own knowledge? that is right, is it not?

A. That is right; that is perfectly true.

Redirect examination by Mr. DONAHUE:

I saw coal excavated at the bottom of the mine while I was inspecting. Prior to the 27th day of January, 1901, there were about twenty-four or twenty-five men working in that mine, mine laborers and all. They worked two shifts part of the time—not all mining coal though.

Deposition of LEOPOLD SCHMITZ taken at his home in the Township of Braceville, County of Grundy, State of Illinois, near Coal City, before Joseph Vavrik, a Notary Public, in the case of Leopold Schmitz against Wilmington Star Mining Company, and read in this case on behalf of the plaintiff.

Direct examination read by Mr. Haley:

My full name is Leopold Schmitz. I am now forty-three years old and live in Braceville Township, Grundy County, Illinois about one mile and a half from the Santa Fe depot in Coal City. I have lived there about six years, and have been in this country
76 about fifteen years. I was born in Belgium. On January 17, 1901, I went to work as a laborer in shaft No. 6 for the Wilmington Star Mining Company. I worked nights. My manager or my boss was John Wilson.

"Q. Who hired you to go to work?"

To which question, and the reading of the same, and the answer thereto, defendant by its counsel then and there objected, on the ground that it was immaterial in this case who hired Schmitz to go to work.

The COURT: Objection overruled.

To which ruling of the Court defendant by its counsel then and there duly excepted.

"A. John Wilson."

(Reading of deposition continued.)

"I worked just eight nights for this Company; the last night I worked was on the 25th of January, on Friday. I didn't work the Saturday night following, and started to work again on Sunday morning, the day shift, at seven o'clock. I first started to carry rails and ties to make the switch. I got these at the shift on top. I went down in the shaft that morning about eight o'clock. I went down by myself with three long rails. I saw Mr. Wilson, the mine manager, on top before going to work that morning.

"Q. State whether or not you received any orders from Mr. Wilson before going to work that morning."

To which question and the reading of the same and the answer thereto, defendant by its counsel then and there objected on the ground that an order received by Schmitz from Wilson should not be introduced into this case.

The COURT: Repeat the question.

(Question re-read by Mr. Haley.)

77 The Court then overruled the objection of the defendant, to which overruling of the Court the defendant by its counsel then and there duly excepted.

"A. Yes.

"Q. State what orders you received that morning from Mr. Wilson.

"A. Wilson told me to steady the rails going down in the cage."

To which question and the answer thereto, and the reading of the same, the defendant by its counsel objected upon the ground that an order received by Schmitz from Wilson should not be introduced into this case; which objection the Court overruled, to which ruling of the Court the Defendant by its counsel then and there duly excepted.

(Reading of the deposition continued.)

"Wilson saw me when I went down in the cage. I knew who was the mine examiner or fire boss while I as employed at that shaft. I saw Edward Pierard, the examiner, that morning before I went to work. I saw him going down the shaft at seven o'clock this same Sunday morning. I saw the mine manager or mine boss go down in the mine that morning. He went down before me; I went down one cage following.

"Q. Do you know whether Wilson had been down the shaft before you that morning?

"A. Wilson didn't but — fire boss did.

"When I got down in the shaft that morning I took three rails out of the cage and rang the bell for the cage to go up. After I went down Mr. Wilson and Sam Fulton came down with two switch points. I knew Moses Capet. I saw him go down in the shaft that morning. He went down before me. At that time he pushed the car in the day time, cage man. I saw him at the bottom of the shaft that morning in the road straight south about 25 or 50 feet from the bottom of the shaft.

78 "Q. State whether or not you received any instructions from the mine manager Wilson at the bottom of the shaft that morning."

To which question and the reading of the same and the answer thereto, and to this line of testimony relating to instructions, defendant by its counsel then and there objected, on the ground that orders and instructions by Wilson to Schmitz should not be introduced in this case, there being nothing to show that Fulton was present or knew anything about them; and upon the further ground that there was nothing in the declaration which would render instructions by defendant to Schmitz competent in this case, and that this is a statutory proceeding based upon exact language and the provisions of the Statute, and there is nothing charged which makes admissible directions from this defendant to some third party. That they would not be admissible even if directions were given to Fulton, and certainly not even if given to a third party; which objection the Court overruled. To which ruling of the Court the defendant by its counsel then and there duly excepted.

(Reading of deposition continued.)

"I received instructions from the mine manager Wilson at the bottom of the shaft that morning. I went down straight south close to the fire box and Wilson hollered after me and told me to go and help Sam Fulton, help push that car on the west road and help Sam Fulton lay the switch.

"Q. Did you do as you were told by Mr. Wilson?

"A. Yes sir."

To which question and the reading of the same and the answer thereto the defendant by its counsel then and there made the same objection as last above set forth; which objection the Court
79 overruled; to which ruling of the Court defendant by its counsel then and there duly excepted.

(Reading of deposition continued.)

"When I started to help Wilson push the car, Mr. Wilson, the mine manager, was close by the little engine that ran the fan. There was no light at the bottom of the shaft that morning, and I had just my lamp to work with. Mr. Wilson took his light, and Fulton had one. These were pit lamps attached to the cap. Mr. Wilson was fifteen or twenty feet from me when I started to push the car with Sam Fulton. There was no wall or anything between me and Mr. Wilson. The space there at the bottom of the shaft or drive way is about sixteen feet wide. I did not measure. When Fulton and I started to push the car away, Wilson was close up to the little engine; right close to me when we pushed the car.

"Q. Now, Mr. Schmitz, on one place you state he was fifteen to twenty feet away, and in another you state he was close by you; now state just where you was when you and Mr. Fulton started to push the car.

"A. I had to push Wilson back with my hand so as — rails would not touch Mr. Wilson."

"We were going to push the car in the west road, but stopped to take the track layer's tools. I put the tools on the top of — car to take to the west road. Mr. Wilson was looking at me at that time. When I was pushing the car I was on the south side of it, and Sam Fulton was on the north side. Fulton and I pushed the car about fifteen or twenty feet the first time and then stopped to get the tools. Then I went right straight and pushed the car along the road to lay the switch. I pushed the car along to the point where the bottom switch would connect with the other track, but there was no
80 switch at the other point where there should be a switch. Then Sam said: "Schmitz, lay down, the gas is lighted." I felt round for a stone to block the car, and put my hand on my mouth to keep the gas out of my mouth, and then as I got the car blocked I just had time to lay down. By keeping the gas out of my mouth, I mean fire. The west entry was about six feet wide, and a little more than four feet high at that place. I can't tell how sudden this fire came upon me and Fulton at that time; came quickly, all at at once. I saw Sam Fulton lay down. He layed between the wall and car. I layed down on the center of the track four or five feet

back of the car. The track was about two and a half to three feet wide. The car was five feet long, two feet ten inches or three feet high above the track. I hadn't any warning before the fire struck me that morning. The first notice I had of this fire that morning was just when Sam told me. Sam said for me to lay down. He said it quick. It was all in light; gas was in fire; there was no noise. Sam Fulton got all smashed, got killed the same instant; the explosion killed him. I got thrown down with the fire; I was thrown over three pair of rails. These rails were very long.

"When I arrived at the shaft Sunday morning I saw Sam Fulton there on top. I helped him get rails and points of switches. Before going down I helped Fulton carry three long rails and one car of props to the top of the shaft. I saw Edward Pierard, the fire boss, and Moses Capet go down at seven o'clock.

"After I was thrown over three pair of rails by the explosion, I called for help. The fire boss came, Edward Pierard, boss John Wilson. Moses Capet came after. Sam Fulton was behind me when they came. I was laying down.

"When Mr. Wilson came down with Sam Fulton, Wilson the boss went to the pump room to turn on the steam, but a little valve to turn on the steam was broken, so Wilson had to use a monkey
81 wrench to turn on the steam. The same steam supplied both pump and fan. The steam came from the boiler room on top of the shaft. I saw Mr. Wilson start the fan with a wrench."

Cross-examination read by Mr. Sidley:

"While I was working with him, Pierard watched for gas, to see if gas — in the place, and if there was he would chase it away with a rag. I helped him. I never seen him use any means to get rid of the gas beside waving a rag. He started the fan about two hours before going in the mine. He only had a fan for west road, for the side that had gas. The gas in the mine was on the west road. I am talking about those eight nights I worked in the mine. I didn't work in the mine at all after the explosion. Pierard started the fan every one of those eight nights while I went around with him.

"When I went down into the shaft the morning of the explosion, the fire boss, Pierard, and Moses Capet were at the foot of the shaft. I was at the bottom, and Wilson and Fulton came down. I waited till Mr. Wilson turned on the steam. He couldn't do it; the valve was broken. He went up top to get a monkey wrench, turned the steam on the little engine which turns the fan. The valve was broken; they used a wrench. Edward Pierard used the monkey wrench, and that day the boss used it. Pierard used it for the night time. I saw him use it every night. There was just one valve in the pump room to turn the steam on to the engine. (Witness points to the place on the plat at the southeast corner of the portion marked 'pump room' opposite the words 'one and one-quarter globe valve,' etc.) This is the valve that I say was broken. There is the fan engine (pointing to the place marked 'vertical automatic engine'), and there is the fan (pointing to the place marked '30 inches Garden City fan'). The fan engine was run by steam from

the pump room. After Wilson came down with the monkey wrench Moses Capet helped him start the fan. Wilson just turned
82 the steam on the pump room, and Capet turned the fly wheel on the engine to make it go. I helped Capet. After the fan was started I went straight south road, Edward Pierce was working down there. Besides Pierard and me Moses Capet was working there too. When I went straight south I left the boss and Sam at the bottom of the shaft. That is, Wilson and Fulton. I went straight south to Pierard, and it was about ten minutes after that when Wilson called to me. When he called, he was close up to the fan engine. It was too far for me to see him. He was by the engine. When he called, I went to Wilson. Fulton was on the east side — the bottom of the shaft when I came to the bottom. Moses Capet was some place to the south road, some forty feet or something about that in from the bottom, sawing a 2x4. Pierard was on the first road south making a hole on side of wall to put that 2 x 4 in. When I left Pierard he was making those holes inside of the wall. When I came out to the bottom, Wilson was standing beside the fan engine, close to the engine. The car was on the plate.' I pushed the car fifteen or twenty feet west of the fan, something like that, to get the tools. When Wilson told me to help Fulton, he was greasing west of the engine. He told me to help Sam, nothing more.

"Dr. Brock came here to visit me on Monday after the explosion and asked me to give my testimony at that time as to how the explosion occurred. I gave it to him the best I could. I told Dr. Brock exactly how it happened. Everything that I told Dr. Brock was the truth. He wrote down on paper what I said. Squire Henderson asked me the questions. I forget who else was here beside Brock and Henderson, but it was the inspector of the mines. I don't know his name. I signed the writing after Dr. Brock made it; I made my cross, and that was all I did. Brock signed. I
83 couldn't say whether Henderson signed. The doctor said I had Bright's disease."

(Redirect examination read by Mr. Donahoe.)

"The doctor said my kidneys were affected. I have trouble with my urine. I don't know what Bright's disease is. Doctor told me I had it. Doctor said by my urine it was Bright's Disease.

"I saw Edward Pierard go down that morning before I did. In reference to examining the mine to see if gas was there, I did whatever the boss told me to do. I was not hired to look after the gas.

"Q. While you and Wilson and Fulton were at the bottom of the shaft before you pushed the car, did Wilson tell Fulton or you to wait until the gas was out?"

To which question and the reading of the same and the answer thereto, defendant by its counsel then and there objected, on the ground that it was not proper redirect examination, was leading, and for the further reason that it appeared from the reading of the following questions and answers that Wilson's direction was not given to Fulton, but was given to the witness Schmitz and is there-

fore immaterial in this case; and upon the further ground that there is no count in the declaration upon which the testimony of a command to Fulton to go into a dangerous part of the mine can be based, that there is no count charging this defendant with negligence for commanding him to go in, and that there is no provision in the Statute which would justify it. That direction to Fulton himself would not be competent for the reasons stated, and even to a greater extent directions to a third party, even if Mr. Fulton should have been shown to have heard them, could not be competent.

84 Which objection the Court overruled to which ruling of the Court defendant by its counsel then and there duly excepted.

"A. No.

"Q. What did Wilson say to Fulton?"

To which question and the reading thereof and of the answer thereto defendant by its counsel then and there objected on the ground that it was not proper redirect examination, that there was no proper foundation laid in the declaration for the introduction of specific commands of this character from the defendant's mine manager to Fulton, which they are leading up to, and which the question seeks to draw out. That the Statute warrants no such ground of recovery, and there is no count upon which a command to do an act of this character which led to his death is based. Which objection the Court overruled; to which ruling of the Court defendant by its counsel then and there duly excepted.

"A. Boss no tell to wait, but told to go.

"Q. State whether or not Wilson the boss said anything else to you and Fulton except to go.

—. ——.

"Q. What statement, if any, was made to Fulton by Wilson?"

To which questions and the reading of the same and the answers thereto, the defendant by its counsel then and there made the same objection as to the next preceding question; which objection the Court overruled; to which ruling of the Court the defendant by its counsel then and there duly excepted.

"A. Just tell me to go, that all."

85 (Reading of deposition continued.)

"I know how Pierard got the gas out before this Sunday morning. He had a sack or old coat to chase the gas away. About half an hour before the men went down in the shaft in the morning he chased the gas out from the faces, so that the men could go to work at seven o'clock.

"I didn't keep track of what work I did when I came back to Coal City, but I worked in shafts No. 4, 5, and 6 of Wilmington Star Mining Company. I dug coal there, had a room in those shafts."

Re-cross examination read by Mr. Sidley:

"On this Sunday morning I assisted Moses Capet to run the engine. I had to assist him to turn the wheel because it was too hard to turn.

The water in the cylinder made it hard to turn. The water in the cylinder came from the steam. As the steam gets cold it turns into water. When I was in the mine with Pierard, it is my job to do whatever Edward Pierard tells me to do. I helped Edward Pierard start the fly wheel every night. Every time the wheel was started there was water in the cylinder; that was what made it so hard. If the fireman put on the coal or would leave the door of the furnace open, the steam would not have its right strength, and there was water in it which collected in the cylinder. There was water in the cylinders on that Sunday morning. Wilson was in the pump room; did not see him turn on the valve. I saw him go, but did not see him turn it. Wilson went on top the cage to get monkey wrench came down right away with another one. Sometimes one man would start the wheel in the morning; lots of time two men. On Saturday night there was nobody working in the mine. Before I went down in the mine I was carrying three long rails, a car of props, and carried them close to the shaft. I found the props the other
86 side of the shaft, and carried them on my shoulder to the car. The car was at the side of the shaft all ready to push on the cage when the props were in. It was ten or twelve feet to the cage, I got the switch points on the other side of the shaft close to the props, on the south side of the shaft about forty feet away from it I carried the switch points close to the shaft, but did not put them on the car. I put them close to the car. It took me about three quarters of an hour to get the rails and the props and the switch points to the shaft. I took the rails down in my arms. Sam Fulton and Boss put car on, and he took it off at the bottom."

87 ALEX FULTON, a witness produced on behalf of the plaintiff, having been first duly sworn, testified as follows.

Direct Examination by Mr. HALEY:

My name is Alex Fulton. I am a coal miner, and have lived at Coal City about twenty-four years. Samuel Fulton was my brother I saw him about two days before his death. I lived a mile and a half from mine No. 6 of the Wilmington Star Mining Company; something like that, I believe, I don't know. I have been over at the mine quite often. I never worked there before the accident. I was there six or eight weeks before the accident looking for work. I didn't get any work. I could take a place and room with three men in the room, and a man could not make his salt, so I didn't stay. I was around the mine; they were opening the mine up all around. I mean by opening—well, take in a new mine where they drive narrow work and put in a lot of rooms, and then they start and open all around. There was coal being mined. I don't know how many men were at work there; there was quite a few of them. After the coal was mined, they put it in a flat or box car, a railroad car. There was a track leading to the mine. I walked on the track to the mine. I saw the mine in operation as a mine six or eight months before the death of my brother. I saw coal being loaded onto flat cars from that mine five or six different occasions. When I

was down in the mine looking for work, I didn't observe how many men were there at work. I didn't pay any attention to it. I didn't pay any attention to it at any time. My brother was thirty-seven at the time of his death.

Cross-examination by Mr. SIDLEY:

Beside the coal being brought up from that mine, I have seen dirt and rock, I mean rock when I say dirt; it is mixed with dirt anyway. I saw it brought up on the cage. When I was in there, they were digging coal down in the mine No. 6. I was down looking for work. My brother was working there when I was down. That was six or eight weeks before his death. He was track laying all over, laying track in No. 6. I didn't follow him around the mine. I was only down that day, but I seen him that day taking in rails on the east side. I guess the coal was being taken out all around. I know they took it out east, north, west and south some. I have seen it hoisted and dumped. I saw the picks put into it in taking it out of the earth. I have seen this right in the west where the accident was. I saw it taken from the straight west six or eight weeks before the accident. The straight west was not in very far at that time. I call the place where the accident was the straight west. I could not tell you just how far it was in at that time; a couple of hundred feet. They were taking coal out of them there; that is sure.

88

Q. Had the straight west been cut in further than where you saw them taking coal, or did you see them taking coal at the straight west as it was then?

A. Yes.

Q. That is, they were at the end of the straight west at the time taking coal out. What else were they taking beside the coal?

A. They had to take rock.

Q. Rock and dirt? You know what narrow work is, don't you?

A. Yes.

Q. They were doing narrow work, weren't they?

A. Not then.

Q. What were they doing?

A. Getting opened up all around.

Q. Around what?

A. Opening out the mine around, opening out the places.

Q. For what purposes?

A. Well, they have got to do that to make a mine out of it, I guess.

89

Q. That is, they first have to open out the mine, the first thing in the bottom?

A. Drive the narrow work at first.

Q. And what was the purpose of driving that narrow work in opening out the mine at the bottom? Is it to get circulation around in the mine?

A. Yes.

Q. That is the purpose, is it, and in this sort of a mine they open it out in this way and do their narrow work so as to construct a pas-

sage way around to the shaft, Isn't that so? So that the air will go around the mine and give good circulation?

A. Yes, after they get it opened out.

Q. They were opening up at that time, were they, and in opening it up they were taking out rock and coal and anything they came to, and that stuff was being put on the cars and taken to the ground and hoisted. That is what you say, isn't it?

A. Yes.

The coal that I saw there, some of it was not in very good shape; it was blown out, and other was good. They took everything from the narrow work all out on top. They did not put rock in the cars, but on the dump. They got it out of the mine the same as they got the coal, on small cars. Where they were doing this narrow work and getting through the stone and coal and rock, they took that stuff and put it on the cars and run it along on little tracks and got it to the foot of the shaft, and then they hoisted it on top.

My brother was laying track at the time I was there, in the east, the day I was down there. I was in the west; he was not there; he was in the east or some other place. I was looking for work down there. I talked to Wilson, the boss, at the bottom. I never saw my brother in the west because I was not there any more up to just a year ago. I saw coal taken in the east; I was not all over the south. What I saw is what I have described already in getting the coal and the stone out of the mine.

90 Redirect examination by Mr. HALEY:

They do not mix the coal and earth and rock and put it all in the same cars. When they get rock, they load it in the cars by itself, that and the dirt. They don't mix coal with it. They load the coal in a car by itself. Some parts of that vein were three feet thick, and some parts were a little more with black jack, but that isn't coal. Both earth and rock have to be removed in any mine, no matter how long in operation. In the coal fields at Braidwood or Coal City they can take the coal out. They brush, that is, take down rock and build a road. They leave all the rock and dirt in the mine that they take out in brushing up the room. Sometimes if they have got too much they have to send it on top or some place; send it out to the bottom.

EDWARD HOUSDY, a witness produced on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. HALEY:

My name is Edward Housdy. I am a miner and have lived at Coal City twenty-seven or eight years. I have been a miner for twenty-five years, as near as I can recall. I have known of shaft No. 6 of the Wilmington Star Mining Company ever since they started to sink it. At the time they sunk that shaft I lived within three quarters of a mile. I never went over there at all only once at that time on one Sunday. I had been over there once before the death of Samuel Fulton. When I was there they were driving nar-

row work and opening it out. I don't know whether they were doing any mining or not. They were opening out the mine, driving narrower. I saw coal taken out. I was only over there one day, on a Sunday; a flat car pretty near loaded then. There was a side track laid into the mine. I stayed there that day probably about an hour. This Sunday was before his death. I did not go
91 down into the mine; I saw whatever there was from the top.

Cross-examination by Mr. SIDLEY:

Beside the coal that had been in the cars, I saw dirt on top up where they dumped the dirt out. There was dirt and rock there too on top. I never was down in this mine before Mr. Fulton's death. I suppose the coal I saw on top of the mine came from down below. It was supposed to come from down below.

Q. You did not see it come up?

A. No, they were hoisting that day, it was Sunday.

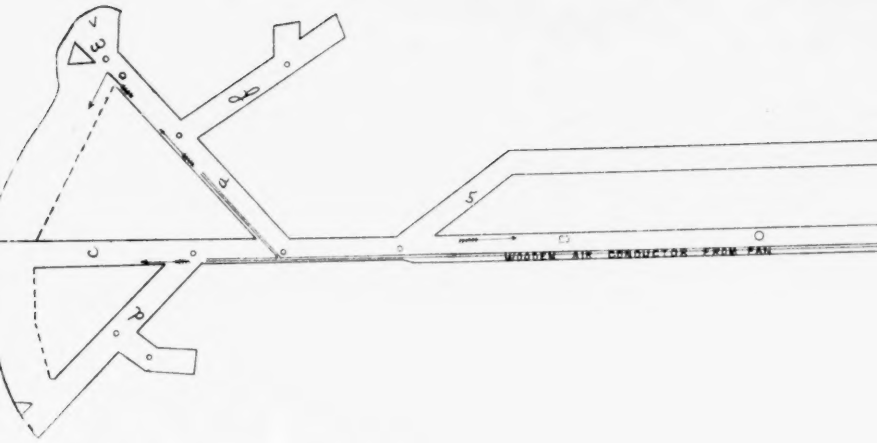
Q. You did not see it brought up?

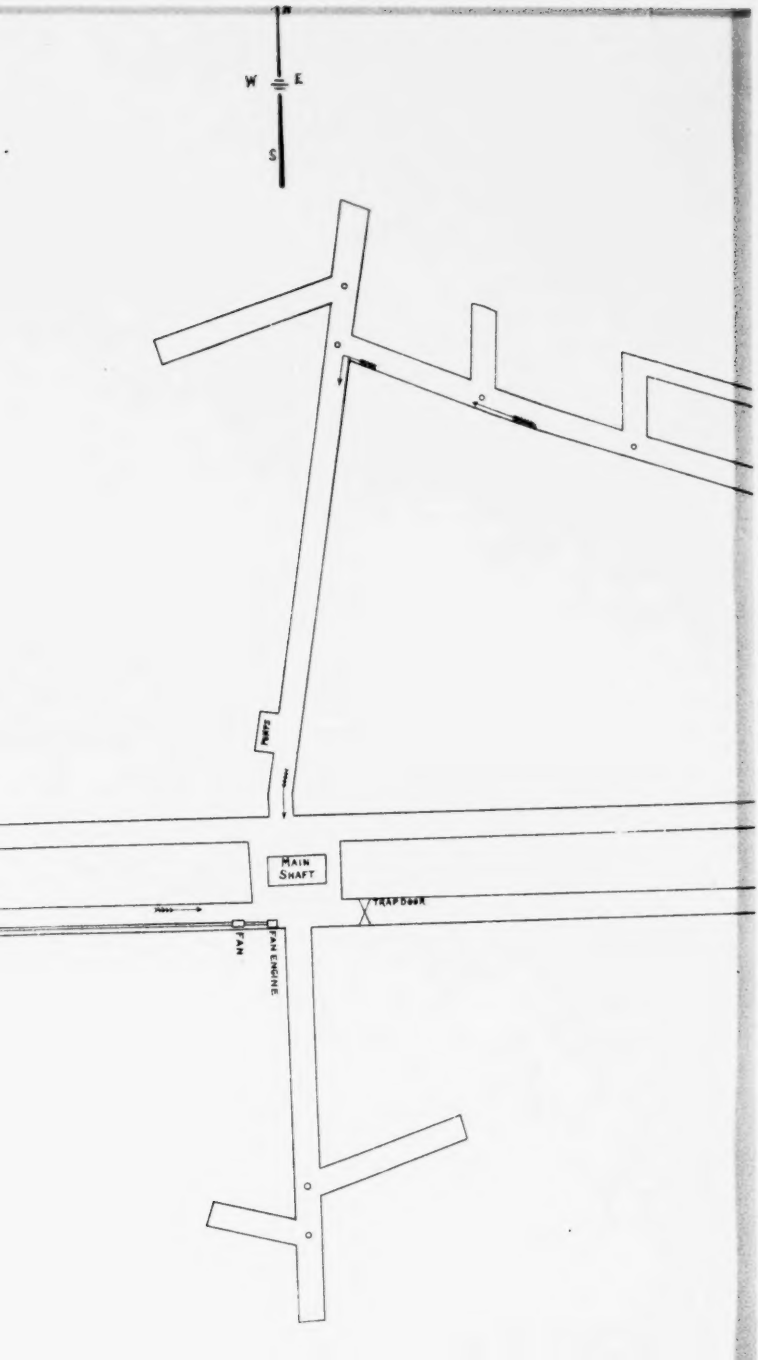
A. That car was standing there pretty near loaded.

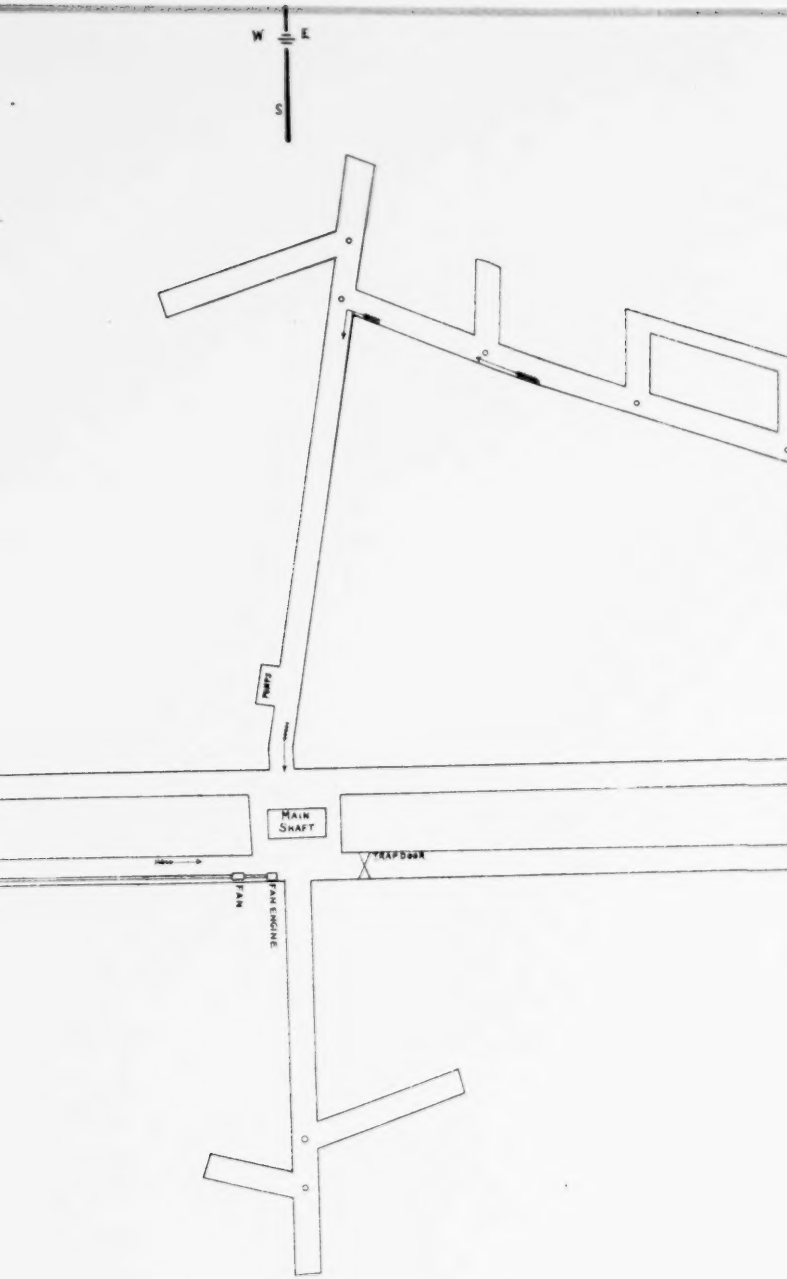
I don't know what part of the mine it came from; it was pretty small coal, fine coal, as though it had been shot out by blast.

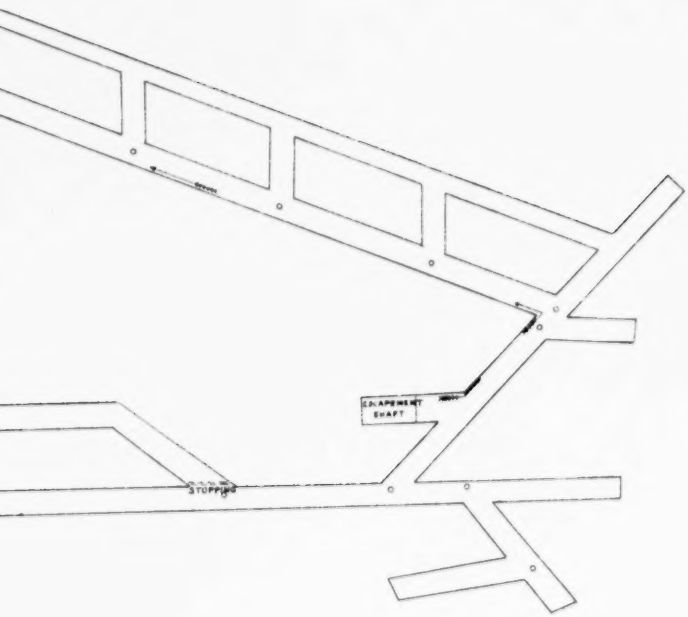
The blue print, plat or map referred to in the examination of the foregoing witnesses was here introduced in evidence, and is as follows, being the same plat, map or blue print hereinafter referred to in the examination of defendant's witnesses.

(Here follows map marked page 92.)


WOODEN AIR CONDUCTOR FROM FAN


W
E
S
MAIN SHAFT
TRAPDOOR
FAN
FAN ENGINE


W
E
S
MAIN SHAFT
TRAPDOOR
FAN
FAN ENGINE



SCALE 20 FT. TO INCH.

No. 139.
N. S. M. Co. } fr. 92.
vs
G. Hem.

93 Plaintiff here rested her case.

Thereupon the defendant by its counsel moved to strike out counts 2 and 3 of the declaration, which relate to cross cuts and stoppings, on the ground that cross cuts and stoppings are not adapted or useful in long wall mines, but are only useful in other kind of mines, and are not required by the statute to be placed in long wall mines; which motion the Court overruled; to which ruling of the Court defendant by its counsel then and there duly excepted.

And counsel for the defendant then and there moved to strike out the fifth count of the declaration on the ground that the plaintiff in her case had directly negatived the allegation that Fulton was not in the mine at that time under the direction of the mine manager; which motion the Court overruled; to which ruling of the Court defendant by its counsel then and there duly excepted.

And the defendant by its counsel then and there moved to strike out the sixth count of the declaration based on the requirement and provision of the Statute contemplating an accident to the machinery, on the ground that the uncontradicted testimony is that the only defect in connection with this mining machinery was that there was a certain wheel absent from the valve regulating the steam, and that this wheel had never been there from the time it was put in. That there was nothing in the evidence to show that any air current was obstructed or stopped by this. That this was not such an accident as was intended by the statute. Which motion the Court overruled; to which ruling of the Court defendant by its counsel then and there duly excepted.

94 And thereupon the defendant, to maintain the issues upon its part introduced the following evidence:

JOHN WILSON, called as a witness on behalf of defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. SIDLEY:

My name is John Wilson, and I have resided at Coal City in Grundy County in this State about twenty-six years. I am mine manager for the Wilmington Star Mining Company, and have been such manager since about the middle of the month of April, 1900. I was examined by the State Board of Mine Examiners to be a mine manager, and received a certificate from them to act as such mine manager. I have this certificate with me. (Witness here produces a document.)

Mr. SIDLEY: I desire to offer this certificate in evidence.

Mr. HALEY: Let's see it. Go ahead while I examine it.

I have been employed by the Wilmington Star Mining Company in the neighborhood of twenty-six years. While in their employ I have done all kinds of work in general in regards to a mine. I began helping to sink a mine in the first place. I have laid track; I have acted as pipe man, laying pipes, fitting up pipes; dumped coal, and

done everything in connection with the mine. In the month of January, 1901, I was acting in the capacity of mine manager for this Company at shaft No. 6, in which Mr. Fulton was killed. I had charge of the shaft and of the mine in the shaft. That was true of the day that Fulton was killed in the mine. I had charge of sending men into the mine, into this shaft. There was a mine examiner in that shaft, and he was under the direction of the mine manager, that is, under my direction. His duties as mine examiner were performed usually at night. The Superintendent of that mine
95 was Mr. William Campbell. He was my superior officer, and was not a mine examiner to my knowledge.

I remember the occasion of Mr. Fulton's death. I had known him, I guess, in the neighborhood of about twenty-eight years. I knew him before he came to Coal City, in Braidwell. He started to work in the mines before he left Braidwell. I couldn't tell just exactly when he came to Coal City, but I should think pretty much about the same time I did. While he was in Coal City, he was digging coal, several kinds of work, laying track, and Company work in general. He was working in connection with mines all the time. To my knowledge he had dug coal and laid track and worked on Company work in general, general repair work. I believe he worked nearly all the time for the Wilmington Star Mining Company for over twenty years. I would consider him a practical man, a practical, skilful miner. At and before the time of his death he was laying track in the mine. He was in charge of the track laying in the mine, and, practically speaking, he had laid all that had been laid in the mine at the time of his death. We began sinking this shaft No. 6 about in the month of April or May, 1900. Mr. Fulton had been working in that shaft before his death—I couldn't tell—for a month or so. He had been working, sinking, I don't know just the date when he began sinking. I couldn't swear to the month. I should judge about in the neighborhood of two or three months before that. At the time of Mr. Fulton's death the mine was not near completion at all. A circle had been completed in the east end of the shaft around toward the north, but around to the south the circle had not been completed. In the south, the west near the north; the circle was not completed in them. I mean by the "circle" the roadway. The roadway is an air way around the shaft, air passage. I would describe the work we were doing in the mine at and
96 shortly before Mr. Fulton's death as "narrow work;" turning the pillars. The general word in regard to how the work is described is the narrow work, turning the pillars. I mean by narrow work in the mine driving a road about six or six and a half feet wide, cutting it out, blasting out the coal, and driving it in to the neighborhood of six or six and one-half feet wide. We were not doing anything else in the mine at the time besides making roadways; could not do anything else, unless making the roadways. As I said, we were driving the narrow work; instead of mining the coal, they were cutting the coal in the center and blasting it out on both sides. They blasted the rock down too afterwards. The coal that we were taking out of the mine was not in very good condition, because it

was all shot to pieces. It was not in the condition in which we took coal out of the mine for commercial purposes, to sell. Coal for commercial purposes is worked in a breast, undermined. The condition of the coal for commercial purposes, in mining coal for commercial purposes, it is undercut, cut in under and then took down. As a general rule, when you work in long wall mine, when it is undercut, the coal breaks itself. Sometimes they use blasting to get it out when it don't break. We undercut is before we blast it. The coal when it comes out from undercutting is chunky; is in chunks, lumps, when it drops down; but the coal when you are driving a narrow is blasted out, and it is all shot and shivered, don't stand nothing, breaks all up in to slack. The coal that I speak of as being undercut for commercial purposes is not taken out of the roadways; it is taken out all around the circle, around the mine. The circle is not outside the roadway. That is next to the working faces when the mine is developed. The working faces are the difference between the narrow work and the work after the narrow work is finished, when the mine is developed, in the roadway, you have so much of the roadway, the wideness, and then you have so much on either side of the
97 road, and then you undercut that all along. We were not undercutting coal at the time this accident occurred to Fulton, and had not been before that time.

Q. I show you a plat which has been used by some of the witnesses, and ask you if you recognize that plat with reference to the mine in question.

A. Yes sir, I recognize the plat as the condition of the mine at the time of the accident. This west part of the mine was not near completion at all at the time of the accident. Before that Sunday and up to that time myself and the men under my charge were working in the west side of that mine putting this narrow work along here and extending the track and extending the work along here to carry the air to where the men were working. This short blue point at the north is straight north, the only work was at this point here; then that was not connected, and we started here to make a connection at this (indicating on the plat), and that was the condition at the time of the accident. They were being connected to make the circle around the shaft. It lacked from here to here, to make the connection from here to here, and making the connection here. Our purpose with reference to the men in the mine was with refere*nce* to making those connections. We were working on that work up to the time of the accident. The purpose of putting those air boxes along this place west here was to carry this air inside where the men were working so as to give them air and keep the gases out. With reference to the map, the face of the coal was here (indicating) at the end of the roadway. A fan was used at this time for the purpose of getting air out of the end of those boxes to the men. This fan was operated by an engine, and it was located here, and the fan about six feet or a little more ahead of the engine, from the engine to the fan. Prior to the accident, besides this fan there was ventilation in the mine, right from the air shaft here. The air shaft was

the down pass and the air circulated and came down here at
98 the bottom of the shaft. That was natural ventilation and did not affect this part of the mine at this time. The only effect it would have on the air on the west side of the mine would be to make it stronger. It would pull it quicker from the boxes on the return. Before the fan was put in here, the air came down to the bottom of the shaft, and we extended the boxes through and up the center, and it was worked by natural ventilation before we put the fan in. The condition of the air was good at the bottom of the shaft before the fan was there. I couldn't just exactly tell the date when the fan was put in the mine, probably in the neighborhood of six weeks or so before the accident took place; from a month to six weeks. I couldn't be certain for sure. I don't know when we began working in the west roadway in the mine, to extend the west roadway. I couldn't tell the date. We must have been working on the west roadway about two or three months before the accident. We proceeded with that west roadway, I believe, from 150 to 200 feet before we put the fan in. We found gas in the west roadway about 50 or 60 feet from the bottom of the shaft; then we found gas there right along from that time up to the time of the accident and after. We started to find the gas about 50 or 60 feet from the bottom of the shaft, and there was gas constantly all the time right along after that. Mr. Fulton had the laying of the track, track constructing of it in the west road right along, laid all the track in connection with the west road right from the bottom. Before he was killed he was working in the west roadway practically every day that he was at work, sometime in the day; not steadily, you know, but some time in the day he would be on the west road pretty nearly every day. He had been working in that west road pretty nearly right along all the
99 time, up to the time of his death. He was killed, I think, on Sunday, the 27th of January, 1901. That was not a regular working day in the shaft. We had been in the habit of working Sunday previous to that, repairing. The repairing work is something, some accident comes on, or construction work you can't do when the men are working. I should judge that we had in the neighborhood of 30 to 35 men working in the mine before Fulton's death. We had more than one shift, sometimes in the day shifts, and sometimes just two. We call a shift eight hours. The men had been cutting narrow work on these shifts. I think at the time of the accident there were about from ten to twelve men working in the west entry every day, that is, prior to the accident. The fan was working every day while they were in there.

Mr. Pierard, Mr. Capet, Mr. Schmitz and myself, and Mr. Fulton were in the mine on this Sunday when Mr. Fulton was killed. Mr. Fulton wanted to get some work ahead that he was behind. I had a conversation with him on Saturday afternoon in regards to coming to work on Sunday. That was the day before he was killed. The conversation took place in the mine; if I am not mistaken, I think it was on the east side, on Saturday afternoon. We was talking about the work in general and the work that had been done, and he had been idle some time previous to that, and he asked if it would

not be well for him to get out and get some of that work out, get worked ahead, that it was behind. I told him yes, it would be all right. That was sometime between two o'clock and half past three Saturday afternoon. The regular shift was working in the mine that Saturday and quit work at half past three. This was before the men quit work. The fan was working that afternoon in the mine. It stopped, I should judge, about in the neighborhood of four o'clock in the afternoon. I stopped it. Mr. Fulton was at the bottom of the shaft when the fan stopped, and we went up together
100 out of the shaft. I next saw Mr. Fulton Sunday morning. I should think it would be about between seven, half past seven, sometime near to half past seven; it might be twenty minutes after seven, from that to half past seven, I don't know the exact time. I saw him on top the shaft. I didn't have any conversation with him there. I assisted him a little in the work on the top. He was carrying props and things to work with, and I gave him a hand for to go down for it, and gave him a hand to take it down, some switch points and things he was taking down the shaft, and I gave him a hand and went down with him. When I got to the bottom of the shaft, I went to start up the fans. Mr. Fulton, Mr. Pierard, Mr. Capet and Mr. Schmitz were all around after I went down. Capet, Pierard and Schmitz were there on that Sunday morning because I had instructed them to come to work, to assist in putting in boxes for air, to extend the boxes to the work on the face of the road, the end of the road. When I got to the bottom I went down to start the fan, and I couldn't get a wrench to open up; I had lost that, and I turned and went straight up the shaft and opened the valve. When I first went down with Fulton Mr. Schmitz was in the bottom, and then Mr. Pierard and Mr. Capet came to the bottom. The five of us were at the bottom. When I went up on top they waited there till I came down. When I came down with the wrench I gave the valve a turn and opened the valve. The other four men came onto the bottom and some of them assisted to help start up the fan. Fulton was right at the fan when it was started, helping to start it, turning the wheel, I think. After the fan was started, Pierard and Capet and Schmitz went into the south road. This is the south road here (indicating). Pierard and Capet and Schmitz went into the south road, while I was right in the bottom here. Fulton and I was in the bottom here. I had some conversation with
101 Fulton at that time. Where Fulton was going to work, it was to the left of the straight west there, right in the straight west here (indicating). He was going to lay a switch right through at the point marked D. The conversation I had with Mr. Fulton was in regard to the directions of this roadway. They got off the bearing a little too much to the right, and I directed them to keep close to the left-hand side and keep it to the proper course. The track was laid past here (indicating), past the point marked D. Our conversation was in regard to the course of that road; I was telling him to put the track so as to get it back in its regular course, and after we had talked the matter over, he wanted to know if there *was* wasn't going to be somebody to help him. I said, "Yes, I will give you Smith." He said what was the matter he couldn't get Capet. I said

I thought Smith was all right for that kind of work. I told him there was no hurry, he was to wait and let the fan clear out, and then I would run up with the lamp and see if it was all right, a safety lamp, and see what it was like. "Oh," he said, "I know." I said I would run up with the safety lamp.

The COURT: Run up where, what do you mean by running up?

Q. What do you mean by running up?

A. Up into the south road, because it was all up hill.

Q. The south road, you mean?

A. The south road.

The WITNESS: No, the west road, up in here in the west road, go up here with the safety lamp and examine it before anybody could go in. "Of course," he told me, he said "I know."

Then I went into the south road; I went into the south road just directly after that. He was right about here when I said that to him (indicating). The car was sitting about at the time forninst where the fan engine was. He was near where the fan engine was down at the bottom of the shaft where the plate sheets is. When
102 I left he was resting on the pipes; resting on the car then when I came into the south road. I went in at the south road fourteen to twenty feet; I couldn't say exactly, somewhere in there from fourteen to twenty feet. When I got into the south road, I told Smith that he had to help Fulton to-day. Smith was in the south road, further south than where I was. Mr. Pierard and Mr. Capet were also in the south road. Mr. Pierard was about, I should say, probably 50 feet or so farther in. Smith was pretty close to where Pierard was. Capet was from fourteen to twenty feet in the south road, I think. I should judge from 14 to 20. I don't know the exact distance. Each of them had their miners' lamps with them. When I went into the south entry I started to measure the 2x4's that Mr. Capet was putting into the south rock to carry these boxes to see the length I wanted them cut. I should think I remained in the south entry from five to six minutes; of course I can't tell to a minute or two, either way, but I should judge it would be in the neighborhood of five or six minutes. When I called to Schmitz to help Fulton, Schmitz came out and walked past me right to the bottom. I didn't see him after that. My back was toward the bottom. I remained in that south entry, I should judge, in the neighborhood of five or six minutes. I next went out after the explosion of gas. Between the time that I went into the south entry and the time the explosion occurred I didn't go out to the bottom. I did not at any time that day in the mine direct Mr. Fulton to go into the west entry and west roadway. I did not at any time that day in the mine direct Mr. Schmitz to go into the west entry. The only instructions I gave Mr. Fulton that day in the mine was to wait. I did not give Mr. Schmitz any other directions that day in the mine beyond the directions I gave him when I called to him in the south entry. After the explosion occurred, so far as I was concerned, I was knocked down and put in the dark. My
103 light was out and my cap was off—and my lamp. I happened to have my vest on and I had some matches in my pocket. I put my hand in my pocket and pulled a match out and

struck the match and happened to look and I found the lamp, and by the time I found the lamp and got it lit I could hear someone holler. I ran in the west road. Pierard and Capet followed me in. I didn't go very far until I found Schmitz coming. He seemed to be coming on his hands and feet when I got to him. I asked Schmitz where Fulton was, and he said he didn't know. So I left Schmitz in charge of Pierard and Capet, and I went ahead, straight ahead for to find Fulton. I found him. I don't know just exactly how far in it was, I should think probably in the neighborhood of about ninety to a hundred feet, I couldn't say exactly. With reference to that plat, I should judge it was in around somewhere, I don't know just the distance; I would not swear to the distance. It was in the straight road. His car was probably in here somewhere (indicating). The west road at that point was inclined. The incline began pretty much about where I found Fulton. Just directly I didn't go in further at that point to examine the west entry. I next went in that same day. I found the air boxes all broken up and the track all out of shape right at this switch here (indicating); that switch on the road that is marked A to the northwest, and a little bit ahead of that switch there. Right from about here pretty near to the corner of the left hand road there, and then right here, about here the boxes and track were all broken up away back to about this holler here, right back along to the top of the shaft. I saw other evidences of explosion, pipes and things that were blown out on the track. They were lifted out of the car and scattered along the track. From my examination of the mine I think I could tell where the explosion had occurred. I should judge it occurred about here (indicating), from the point where the road A runs into the
104 west road. The object I have in my hand is a safety lamp. It is not the same as that referred to in my testimony, but one upon the same principle, but not just the same make. That one was longer up, not so wide here (indicating), and a little deeper. I spoke in my testimony of running up with a safety lamp into the west entry, before Mr. Fulton went in. There was a safety lamp in the mine at that time hanging on the north entry about 15 or 20 feet from the shaft. It was always hanging there when it was not in use. That was always where it was hanging, up on the timber there out of the way. It was ready for use always. When I came out to the south entry after the explosion the lamp was in the north entry hanging on the timber in the usual place. It was there when I went into the south end. It would take that fan that was in the mine at that time, I should judge, in the neighborhood of twenty minutes to clear out the west entry after it was started.

105 Cross-examination by Mr. HALEY:

My occupation now is mine manager in the employ of the Wilmington Star Mining Company. This is the same Company I was employed with in January, 1901, and the same mine. That mine has been running continuously since that time. Coal is ordinarily mined in that field by undercutting; powder is used sometimes, in a mine that is already opened up. I couldn't answer how many

car loads of coal had been taken out of that mine before January 27, 1901, because I don't know. I couldn't answer, either, what was done with the coal that was taken out of that mine. I know there was considerable burned at the bottom of the shaft of that mine. What was done with the remainder of it I couldn't tell. There was quite a little of it loaded on the ground. I believe there was some loaded in the cars. There was a side track not quite close against the mine, running betwixt the air shaft and the main shaft. There was no weighmaster there. The coal that we took out of the air shaft was running down the bucket, dumped out of the bucket into the car. I couldn't just exactly tell you the exact time when the shaft was sunk and mining commenced. It was in the fall of 1900 some time, I believe. The hoisting machinery and engines were there in the fall of 1900. In the day time there was about 35 men employed, I think. There was not quite so many on the night shift. I was at the mine in the day time, all day; sometimes two shifts came on during the day while I was there. I was not there sixteen hours a day, some worked from seven o'clock in the morning until three in the afternoon, some came on at three in the afternoon and worked until eleven, and sometimes some came on at eleven and worked until seven in the morning. I commenced at seven o'clock. I hired the men that worked in mine No. 6. They were not all working by the month.

Q. How many were working by the ton?

To which question defendant by its counsel then and there
106 objected, on the ground that it was not proper cross-examination. Which objection the Court overruled. To which ruling of the Court defendant by its counsel then and there duly excepted.

A. There was not any working by the ton at all.

Quite a lot of them were working by the yard, and the others working by the day. The purpose of making that cut up there to the northeast that is shown on the plat was for a main road to extend right through as far as the workings go. It was necessary to create ventilation for the air to come around. The air would come around in this first north drive way if it was completed, but when that was extended here then the connection was right along, and when you got to mining it in the working of the face farther back, you have got to keep increasing the main road, the main drive way. These white spots in here indicate coal. It was the intention to leave that coal there to support the shaft. This roadway here to the south extending beyond has two cross cuts or cross walks that was intended to accommodate further mining as we mined back. It would be necessary for circulation around the shaft. It was not necessary in this extending south. There was need of making that there. I should judge that coal had been taken out of this mine two or three months before the accident. I think there were two shifts working in the mine at the time of the acident. They would average 44 or 45 men, but not all at one time, probably a little more on the two shifts. The Wilmington Star Mining Company had other mines down there.

The mine examiner had charge of the mine at nights while he was there. He had charge of all the men that were at work. The second shift would stop work promptly about eleven to twelve o'clock. After the second shift had gone out the mine examiner and Mr. Schmitz would remain in the mine. Their duty there was
107 general work, and the mine examiner examined the mine before the men came to start work in the morning. I don't know just exactly how long before the men started work he examined it. I know it was reported to me before the men started to work in the mine; how long before that I can't tell. He reported to me that the mine was safe. I don't know how long before the men went down there he started the fan. The fan was always running in the morning when I started.

Q. When you went down to work, or let the men go down to work, the fan was running. Is that it?

A. Generally.

Q. Wasn't that always?

A. Eh?

Q. Wasn't that always the rule?

A. When the mine examiner was there, yes.

Q. Well, then he was there all the time, so far as you know, up to the time of this accident?

A. He was not there on a Saturday night.

Q. Well, the night before he was not there, no, but except Saturday nights he was there, wasn't he?

A. Saturday previous?

Q. Yes.

A. I think he was.

If the fan was stopped, then I started it. I started it on Sunday morning. I don't remember just exactly when I started it before that at any time; I have done it though, several times. I don't know just how long before. I recollect one time when the connecting rod of the engine broke, how long it took to clear the mine of gas after the fan was started. I kept track that time of the length of time that it took to clear the mine of gas. I just wanted to find out how long it took. It took something less than half an hour. I looked at the watch. It was about twenty minutes. I remember it was just about twenty minutes. I didn't make any memorandum of that. I don't remember the time of the day or night it was, exactly, that I started *to* fan, nor what time it was that I found
108 it was stopped. After it ran a certain length of time we went inside in the west road to hunt for gas. We didn't go into any other road, just into the west road. That was the road the fan was into.

Q. Was the fan in the west road?

A. Well, the boxes was.

Q. Would not the fan take care of any of the roadways?

A. It took care of the west road.

We had natural ventilation to take care of the south road and the north road. The natural ventilation for the north road, air has to come down the air shaft here (indicating). Right up here.

You come around here (indicating). The natural ventilation for the north road; the connection was made right around here, don't you see? The air came around the air shaft and came around here up the north road.

Q. Didn't the same thing exist for the west road if this is natural?

A. No natural ventilation along here; the boxes laid up into the south road.

Q. There were boxes in the west road?

A. There was a fan set here to take care of the west road.

Q. Were not there boxes in the west road?

A. That is what I am saying, the fan set here and boxes in the west road.

Q. Never mind the fan. There were boxes in the west road?

A. Yes.

There were no boxes in the east road, and none in the north road. The fan didn't help out the north road at all. The north road had just the ventilation that we see here upon the map, around here (indicating); this was the north road.

Q. What prevented ventilation around here up to the jointure of these two roadways at this point; that is, I mean now, speaking of the westerly road?

109 A. You can't take air in one road and back at the same road. You have no connections to go round and make the circle.

The natural ventilation from the air shaft right around here took care of the north road, and the same is true of the south road. It was not true of the west. There is no circulation in the south roadway, but the boxes are here. The air came from the air shaft in here up the main shaft. I mean the natural ventilation, put the doors in here and let the boxes through the doors, and the air coming through here forced the air into boxes here, and go back out in the roadway into the bottom of the main shaft. I have started the fan up myself when the mine examiner was there at the mine. I don't know that I ever did so except that Sunday morning. On that Sunday morning from past experience I knew that there was gas in the west roadway. I knew that was why the fan was put in; we all knew that. I knew those men were going there to work and were expecting to start in at seven o'clock in the morning. I didn't get there quite at seven. I permitted those men to go into the mine knowing there was gas in the west roadway. I don't know just exactly what time in the morning I got there. It was some time between seven and half past. I went down into the mine right after I got there. All I did on top was to help put on some rails that were there. Schmitz was on top when I got there, and I saw him go down. Capet and the mine examiner were not on top.

Q. How long before that Sunday morning did you know that the valve was off the fan?

A. I never knew that the valve was off the fan.

Q. Well, the wheel then that operated the valve?

A. Well, the wheel—there never was no wheel on the valve till the time I put it on.

110 Q. Was there a place to put a wheel on?

A. There was a stem where there had been a wheel on at one time; yes.

Q. What happened to that wheel?

A. I never seen it.

Q. How long had that been there in that place?

A. From the time it was put on.

Q. Well, how long was that? I don't know when you put it on.

A. Well, probably a month or thereabouts, or a little more; I couldn't just exactly tell.

Q. Did you make any effort to secure a wheel to put on that valve?

A. No I didn't think it was necessary.

Q. Was there another valve that operated that fan?

A. The valve that operated the fan was right close by the engine.

Q. What did that have on it, a wheel?

A. Yes, sir.

Q. Was that wheel stationary, so that it would stay there all the time?

A. The one at the engine?

Q. Yes.

A. The one at the engine?

Q. Yes.

A. Yes.

Q. And the one that let the steam on was stationary, and you could turn that whenever you wanted to?

A. Yes, sir.

Q. Well, now it was necessary that the other should be opened in order to let the condensed steam out, was it not?

A. That was the reason that the other valve was on. It was to stop condensation.

Q. That was to let the water out so the dry steam could get out of the engine?

A. To the engine.

Q. Now then, if there had been a wheel on there, of course it would be always serviceable, wouldn't it; the same as the other?

A. It was always serviceable.

Q. It was not serviceable that morning, was it?

A. Yes, sir.

Q. Were you able to operate it that morning?

A. I did operate it; I opened it.

111 Q. Did you find the appliance there to operate it?

A. Within a minute?

Q. I am asking you if it was there so that you could get it.

A. Not right there, but I got one inside of two minutes.

Q. What happened to the one that was there?

A. I don't know. I guess the vibration of the pump had made it fall off into the sump.

Q. A sump is a well?

A. A place to hold water.

Q. Do you know how long that had been off there.

A. I couldn't tell.
Q. Whose business was it to look after that?
A. I placed it on the night before and it was off in the morning.
Q. Did you turn it the night before?
A. Yes.
Q. And it was gone in the morning?
A. Yes.
Q. Where did you leave it?
A. I left it on the pump.
Q. And the vibration of the machinery threw it into the sump?
A. I don't know whether that was the cause or not, but I took it for granted that was what took place.

The machinery had been going pretty much all night the night before. The engineer kept the steam up to run the pumps. I left this thing there and I think it was shaken off in the morning when I got there. It was a monkey wrench. Then I had to go up on top and find another, and when I found the other and came down I was able to turn the valve and let the steam out. I would judge it was somewhere around about twenty to thirty minutes past seven when I started up the fan. It was not nearly eight o'clock. I should judge twenty minutes past seven. I did not look at any time. When I came down and got the monkey wrench the men were all around the bottom of the shaft clear down toward the pump room. There
112 was Fulton and Pierard and Capet and Schmitz. I didn't have any trouble in starting the valve. In starting the fan, I had to revolve the wheel a little. After I started the fan I was standing there having a conversation with Mr. Fulton. There was nobody else around there. Capet and Pierard and Schmitz were in the south road. Pierard was in I should judge from 50 to 60 feet. He was making a place in the solid stone to put the 2x4's in. I could see him picking. Capet was picking places to put in the 2x4's. I don't know if he was picking particularly at that time. He was cutting pieces of 2x4's to put in there where we picked the places for them. He was probably in the neighborhood of twenty to thirty feet north from Pierard, and about fourteen to twenty feet from me. I don't know just exactly how far, sixteen or twenty feet. Schmitz was up toward Pierard. I couldn't tell how close he was to him. He was not doing anything in particular the time that I seen him. He came to the mine to help to lift the boxes. Capet and Pierard knew what I wanted them for. I stood talking to Fulton probably in the neighborhood of five to ten minutes. I don't remember exactly every word that we said. I couldn't tell all that he said. I remember what we were talking about. We were talking about the direction of the road where he was going to work. To the left of the straight west. I was telling him it was not in its proper course, that it was bearing a little too much to the right, and I wanted him to keep the track to the left so that it would bring it back to its proper course. He answered aye, yes, or no, just as the occasion required. He said yes, it was all right. I was instructing him how it should be done, and he answered yes. After we had the conversation with regard to the direction of the road and where I wanted to put the track, he

wanted to know if he couldn't get somebody to help him. I told him yes, he could get Schmitz. He wanted to know if he
113 could not get Capet. I told him I thought Schmitz was qualified enough to help on anything that there was to do. Then I told him there was no hurry, but to take his time and let the fan clear it out, and I would go up with a safety lamp and see what it was like. He said "I know." He was to take his time and let the fan clear it up, and I would go up with the safety lamp and examine it and see what it was like. He told me he knowed. I think we were standing there in the neighborhood of five or ten minutes at that time, I couldn't be sure. Then I went in the south road and told Schmitz he was to help Fulton to-day. I didn't need to call; I could talk to him the same as I am talking to you and him hear me. I told Schmitz he was to help Fulton. I think that is the words I used as near as I can remember, that he was to work with Fulton, or help Fulton.

Q. Did you say to him, "You are to help Fulton?"

A. Yes, either to help Fulton or to work with Fulton. I won't swear which.

Schmitz said, "All right," and came out. He passed me where I was. I had no conversation with Schmitz except that.

Q. When you saw him start to go where Fulton was, knowing that the fan had not run long enough to get the gas out of there, why didn't you tell him not to go over there until the gas was fanned out?

A. I had already told Fulton. He was going to help Fulton.

Q. Why didn't you tell Schmitz?

A. Eh?

Q. Why didn't you tell Schmitz?

A. I didn't think it was necessary to tell Schmitz because I expected to be back there before either of them would go. I didn't intend either of them to go before I went.

114 Q. Why did you order Schmitz to help Fulton before you knew the gas was out of the west room?

A. They had tools to get and by the time they gathered them up I would be ready to go over there.

Q. If you intended the fan to clear up the gas and there should be no movement over there until the gas was out of there, why did you give that command to Schmitz to go and help Fulton?

A. Because I had already notified Fulton that he was not to go up there, and Schmitz was going for to help Fulton, assist Fulton, and there would be no necessity for Schmitz going there if Fulton hadn't been there. There would be no necessity for Schmitz going there if Fulton was not there, and I had already told Fulton not to go there, and I didn't think it was necessary to instruct him.

Q. Did you familiarize yourself with your duties as a mine manager?

A. Yes.

Q. Did you make yourself familiar with your duties as a mine manager?

A. I tried to as near as possible.

Q. Did you know that it was your duty to put a sign on that room——

A. Would it be necessary?

Q. I asked you if you know that that was any part of your duty.

To which question defendant by its counsel then and there objected, on the ground that the question of his duty is a statutory matter, and on the further ground that according to the statute it was not his duty. Which objection the Court overruled. To which overruling of the Court defendant by its counsel then and there duly excepted.

Q. Did you know or did you not know that it was your duty to put a sign upon that room stating that it was dangerous to go in
115 there if you knew there was gas there?

A. No, I did not think it was my duty that morning. I didn't think it would have been anybody's duty to do that. I know there was no sign put up. I believe that for failure to perform my duties I am liable for punishment. Fulton is dead. He was killed dead that morning. Schmitz is dead. I think it would have been about *about* five or six minutes after I went into that roadway until I was aware that there had been an explosion. Just the length of time I don't know. The first intimation that I had of the explosion was when I was knocked down. I should say I was about 220 or 230 feet from the place where I believe the explosion took place. The condition of the boxes and track there about the place leads me to believe that that was the place where the explosion occurred. There was greater injury done to the boxes and the track at that place than there was further down. That would indicate that there was a greater deposit of gas there to ignite than there is where all the gas was. The fire extended several hundred feet all through the ground there. If a box was not strong it would break, and if it was strong enough it would resist it.

When we got down about 50 or 60 feet in one of those driveways, we discovered gas was forming. That would take us down say the first three inches at a scale of twenty feet to the inch, somewhere along there, guessing at it. That would be I should judge about ninety feet from the place where we took them up. I never measured. Fulton was in front of the car; was not near the car at all. He was quite a deal south of that. I never measured. There was quite a distance between him and the car. I saw him when he was lying down there. The position I got him in you couldn't tell whether he was drove or knocked down right there at all. The position when
116 I got him I couldn't swear whether he was drove or whether he had been killed right there. I went in before Schmitz came out. I met Schmitz coming out. It must have been 30 or 40 feet from where I met Schmitz that I found Fulton. When I saw the car last before I went into the south drive, some props and switch rails were on it. The car was pointing west side, in the flat sheds. It wouldn't have to be turned around in order to start them out. The car was pointing west. It was probably about four or five feet off the run from the position where the car was seated. The props were not

quite so long as the car, and the rails were longer than the car. A switch point would be two or three feet longer than the car. The rails were various lengths, some of them twelve, some fourteen, some sixteen feet. These particular rails were twelve or fourteen feet. I couldn't swear to the exact length, somewhere about fourteen feet. There was no trouble getting in at all, because the car was facing west long ways, across the car. The width of the shaft, that is from the shaft back to what we term the bottom, was ten feet from one side to the bottom of the shaft. Here is the shaft here (indicating). That is the square. What I say, there is a shaft to the right of this side, that is at the bottom would be up to about ten feet back. The rails are over twenty feet from here, from this south road. The rails are ahead of the car. I mean bring the rails down the cage and take them off there and lay them on the side and push them onto the track and lay them — top of the track— They were on the track when I went into the south road. I didn't have any difficulty in getting around the end of these rails; the rails were fastened lengthwise to the car, didn't need swerving them round at all. They were on the car, and the car was four or five feet from the end of the rails extending back. The rails were lengthwise of the car. I don't know who started up the car. They were all taken into the west roadway. I saw the rails and props and points all there about
117 where the car was. The road would run from six to seven feet wide. About six feet high. It did not continue the same height all the way through. Some part was higher than others. It was not all even right along. The escapement shaft is about ten or twelve feet from the center here, I shoul l judge, and from the center it is a little farther one side than the other, according to the angle of the road. From center to center about twelve feet; I would not say for a foot or so. I don't know just exactly where that safety lamp that was hanging up near the pump is. We have had several new lamps since. I can't tell when last I seen it. This is the regular safety lamp. The lamp offered in evidence they call a Jenny lamp, I guess. The lamp we had hanging out there the time Mr. Fulton was killed was similar to that—similar in construction; the gauze was deeper and the glass shorter. We were using it steadily before Fulton was killed. I can't tell the last time I used it before that; it is the thing we are using steadily every day; I cannot tell the last time I used it personally. I saw it hanging up there that morning before the death of Mr. Fulton. I didn't have it in my hands; it was hanging in the timber where we always keep it when not in use. I didn't use it that day before the accident. I used it after the accident for the purpose of going up to see what damage had been done.

Redirect examination by Mr. SIDLEY:

I did not see Mr. Fulton and Mr. Schmitz start up the west entry. At that time I was in the south entry.

118 LAWRENCE CALLEGARO, called as a witness on the part of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIDLEY:

My name is Lawrence Callegaro. I am an Italian, and live at South Wilmington, Grundy County, Illinois. My business is keeping a saloon and store. I worked for the Wilmington Star Mining Company in 1901, on or before December, 1900. I remember being injured or burned while in their employment. That was on December 4th. I burned my face and hand. The place where I was burned was down the shaft in the west entry of mine No. 6. I was about twenty yards in, something like that, when I was burned. I went in there below with Angelo Bombario. He is dead now. He called me to go in. I was a little behind him. There was most of the gas about twenty feet further. There was an explosion at that time. The gas exploded. Angelo Bombario lighted it. I was behind; the explosion pulled me behind about six or seven yards. The gas was afire. He started the fire. He had a lamp with him.

Cross-examination.

By Mr. HALEY:

Bombario had a lamp, and he was ahead of me. I got a burn. This was on the 4th of December. I wrote it down. I remember the time because it was Santa Barbara's Day, and the people mostly didn't go to work; they stayed out the day before and the day after that, going in about eleven o'clock.

CHARLES BROMLEY, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. SIDLEY:

My name is Charles Bromley. I live at Coal City, and am a hoisting engineer with the Wilmington Star Mining Company. I received a certificate as engineer from the State Board nine
119 years ago. I have been with the Wilmington Star Mining Company, I suppose, nine years. I was acquainted with Samuel Fulton in his lifetime. I remember having a conversation with Samuel Fulton prior to the 27th day of January, 1901, with reference to the gas in the west roadway of shaft No. 6 where he was killed. That conversation took place in the boiler house, in the boiler room of No. 6. That is right at the top of the shaft. It took place the Sunday previous to the time he was killed. He had not been working for three or four days previous to this, and he said he had been sick, and he being laid up got us to talking about Callegary who had been burned. I asked him about Callegary; I mean Callegaro, the man on the stand yesterday. He said that it would be a

good thing if a few more of the dagoes got burned; they would learn something. After that he stated that he had been in the same road 'Gary got burned; he had got to probably a hundred feet farther than where 'Gary was burned and bailed water out, and he hadn't put off the gas. I had another conversation with Mr. Fulton prior to the 27th day of January, 1901, with reference to the existence of gas in the mine. I can't tell exactly when it took place. I should judge probably six weeks, may be two months before; at the bottom of the air shaft. He asked me to go into the straight road, and I refused to go in. He asked me to go in, but I didn't want to go in. Well, I said, "No, you go in." He asked me if I was afraid, and I said I was afraid, there was a little gas in the road. He asked me if I would like to see him put the gas off, and I told him—— Following this conversation he took a miner's scraper and put his miner's lamp on the end of it. A scraper is what they clean out the hole with. The lamp was lighted. He bent down, laid himself down so that he could hold on, and held the lamp up to the roof until he lighted the gas.

I was at mine No. 6 on the date that Fulton was killed. I had been at that mine ever since they started to sink it in 1900; I
120 don't know exactly what month, probably May. The scales had not been put in at the top of the mine at the time of Fulton's death. There were no screens there for screening coal. There was just one track there at that time, going in from the J,—the switch from the J track; going in from the switch what we brought our machinery in on. As to my experience in and about a mine, I hoisted coal two or three years. I know how coal ought to look in the market, and what plans or facilities are customary around coal mines where coal is being mined for the market. It is customary to have scales in such mines. They are situated at the end of the screens. This would be customary at the time of Fulton's death to produce marketable coal. I think it would be customary at that time to have screens at the top of the mine if they wanted to produce marketable coal. Beside this, I should judge a fan on top, a larger fan, was customary about a mine where coal is being mined for the market; to operate a mine where there is a large number of men.

Cross-examination.

By Mr. Haley:

I have dug some coal, but not a great amount. I was quite a boy when I was mining coal. I cannot tell how many years since then, because I don't know. I don't know just how many months we were engaged in raising coal from the Wilmington shaft before January 27, 1901. That is the best answer I can make to that. I don't know. I was not a witness before the Coroner's inquest. I first told somebody about this conversation I had with Mr. Fulton right after the accident, but I don't know just when. I told it to Mr. Wilson; I don't think I told it to anybody else without it was told to my wife. I don't remember telling it to my wife, but I would tell her lots of

things I would not tell other people. I did not tell Dr. Buchanan. I have not been at the offices of the Company's lawyers here
121 in Chicago. I was at the offices of the Company here in Chicago. I never saw their lawyers *to* this morning or yesterday when I got into court. I didn't have any conversation with them as to what I would testify to, nor with Mr. Buchanan. I told Mr. Wilson right after the accident. I don't think I had a talk with him yesterday. I have never made a written statement to anybody as to the conversation I had with Mr. Fulton. I never wrote it down or made any memorandum of it at all. Before we came up, Mr. Campbell asked me if this conversation was true that Wilson said about. I told him it; told him as near as I could. I told Campbell of it before the suit. I didn't tell anyone except Wilson previous to this time.

Q. I asked you if you did not tell this jury that you did not tell anyone but Wilson what this conversation was. Wasn't that positively your words?

A. Yes.

Q. Did you say that?

A. Yes, sir.

Q. Was that true?

A. Well, I remember now, I spoke to Mr. Campbell.

I forget things sometimes. I didn't forget this conversation. That stopped in my mind all the time. This conversation that I have told the jury about took place in the boiler room. There were two other engineers of the mine beside me. I got on at eight in the morning and quit at four in the afternoon; changed again at four and twelve at night, eight hours each. I remember the day Fulton was killed, the day of the month was 27th, and the year 1901. The time I talked to him was just a week before, on the Sunday before. He was at work below, and came up to eat his dinner. Capet was in the engine room eating his dinner, and Sam and I were the only ones in the boiler room. The engine room was sixty feet from where we was, I suppose, round about there. This conversation came around by my commencing to talk about 'Gary who got
122 burned. Sam opened the conversation first about his being sick. He told me about being laid off; I asked him why he wasn't working, and he said he had been s I asked him about 'Gary, and he said he didn't think 'Gary as working after he had got burned. I don't know when it was that 'Gary got burned; I can't tell you how long before; it must have been all of a month; I would not answer that question definitely. I asked him if 'Gary was working yet; he said he didn't think he was. I didn't know as much about 'Gary as Fulton did. I operated the hoisting machinery. It was probably seventy feet from the cage to where he worked. I asked him if 'Gary was working, and he said "No." He thought it was a pity a few more dago — didn't get burned. That is what they call them down there. It is not a common expression of us people down there to speak of others in that way. He didn't tell me he had any trouble or difficulty with 'Gary. I can't see why he called him such a vile name as that if he didn't have any difficulty;

I didn't understand why. He didn't appear to be angry. He was talking just as you and I are talking now, and called him that name. I didn't get angry about it when I heard workmen called a name like that—wasn't calling it to me. I didn't say anything in reply. As far as I know the conversation ended there. The next talk I had with him was the Sunday morning he was killed. I talked with him through the pipe—through the tube we talked through to the lower landing. The Sunday morning we were talking about a little while ago was the Sunday morning previous to the time when he was killed. I said that I had some conversation with him in the bottom of the mine quite a while before. I cannot tell definite time; I should judge six weeks. It was in the day time. I was down there looking at the pump. The large engine was not in use. I was operating an engine at the air shaft at this time. The large hoisting engine was put on, I don't know, exactly, but it was long after, one year, I think. Before that engine was put in there was a
123 small friction engine to hoist buckets up and down. I was not there running that friction engine when I was down there. I was at the air shaft at this time when I went down. I was connected with No. 6, but there were two shafts. One shaft was down and another engineer were pulling up buckets. That engineer's name was John Weekly. I was engineer at the air shaft. There was an engine and equipment there. There was no one looking after my engine at the air shaft while I was down there talking to Mr. Fulton. It was not in use that day. I went down the stairway to look at the pump. My engine was not going to run that day, and I went down to see the pump at the bottom of the hoisting shaft. I had no concern with that pump except to see it working. There was another man there. He never went away from his engine. There was no report that the pump was out of order. I went down occasionally when I was not busy. I was the hoisting engineer, and I went down to look at it now and again to see if it needed fixing. I saw Fulton at the bottom of the air shaft. I saw someone else; I can't mention the name—Frenchman was with him. I can't tell where the Frenchman is now. I have probably not seen him since the mine was sunk; pretty soon after that. I do not know his name. I had met him before. I have no idea where he lives now—where he may be found. When we had this conversation Fulton and I were right at the bottom of the air shaft. He was working alone laying a switch. The Frenchman was working at the fix. Fulton told me about going into the straight place, the place right past where he was laying the switch. I can't tell you the direction that would be in from the hoisting shaft, because I have no map or anything; don't understand the map on the ground at all. I was familiar with getting one line there. It was the first left-hand road, I think, being the east road. I was right there at the bottom of the air shaft, and probably the straight way where he wanted to
124 go in would not be over 25 feet may be, in that neighborhood, as near as I can judge, from the air shaft. The air shaft is east from the hoisting shaft, I think. I stayed down and took a little wind, five minutes, in that neighborhood. After I got up I

watched him light that gas. I went there to the bottom of the other shaft, the hoisting shaft that is now. I went alone; Fulton went back to his work, I suppose; I didn't pay any attention to him. The gas I saw him stop off was in the first left-hand road off the straight east. That would not be either in the north or south road. The road turning direct may be 45—I don't know the degrees. Where this gas was would not be over fifty feet from the air shaft. I don't know the degrees they laid their road, if any, but it was the first left-hand road, fifty feet from the air shaft. As to what we said, why I just stayed down and he asked me to go into the road and have a look at the coal. I refused to go in because I knew there was gas in there within fifty feet of the air shaft, and the air shaft open. It was just a narrow road. It was within fifty feet of the air shaft and an open shaft, and yet I was afraid there was gas there, and refused to go in. He insisted on my going in, and I would not. I suppose he wanted to see this hair back of my head roll up a little; I don't know what it was. He didn't have anything against me. He wanted to make my back hair like the front. I don't know what it was. There was not enough to burn. I know this because I saw him light it, and I know there was not. Before I saw him light it, I had heard that there was a little and I didn't know the quantity. I think the sole purpose for inviting me to go in there was to get me burned. He never had anything against me before that I know of. He and I were friends, and I think that was one way of showing his friendship. I said I would not go in, and I stuck to it. Finally he went in. He had his pit lamp on the miner's scraper. The miner's scraper was a long iron thing, bent at the end, flat-
125 tened at the end to pull dirt out of the hole. It is a handle itself; it is all along. They have them all lengths. I should judge this particular one was four feet long. He hung a lamp on it. I don't think there was much gas there. I knew there was more than I wanted. I stood near that switch, about 25 feet, as near as I could judge from the place where he had that light at the end of the iron or scraper. If there had been any amount of gas it would not be a safe place. It would most likely kill me if there would be a large deposit. I didn't know if there was a large or small deposit. Every one working there knew there was gas in that road. I don't know anything about this mine damp or anything of that down there; I am not a practical miner. When I was a kid (I mined coal), but that does not enable me to be a practical miner. I have rather forgotten about mining. I don't know anything about gas. I did know there was gas there within 25 feet, and that some man would go there with a scraper and lamp and set it afire. He didn't make any noise at all. The indications that anything had occurred was just a kind of a flash; some little flash. I don't know what his intentions were in going in there and shooting that gas off. I don't know whether he had any sort of business there. He was not laying any track there. He was laying track in that first switch. I don't know whether he had any business, whether he would have to go in there afterwards or not; I don't know. He didn't tell me it was any part of his business to look after the gas in

that room. He went in there and put a lamp on the end of that scraper and carried fire there, as near as I know, to let me see it go off. Whether he had other business or not I don't know. I should judge that gas is a dangerous thing in a mine if it takes fire; and knowing of that danger I say that without any sort of reason that I know of he went in there and purposely set it afire. I am
126 still working for the coal company, and am engineer at that mine. I have been at work for them nine years. I can see this principal or main shaft (indicating on the plat). I was running the engine at this air shaft at that time. Fulton was laying track for the shaft at this place right here (indicating). I suppose it would be south or northeast from the air shaft, according to that. He went up into this road to set off the gas back here (indicating) northeast in this road here (indicating). I didn't measure it. I said about fifty feet from the shaft. There was no obstruction that I know of between the air shaft and the place where this gas was found that I say he lighted. The air shaft was open clear from the bottom to the top without any obstruction of any kind.

Redirect examination.

By Mr. Sidley:

It was in this road here that he lighted the gas (indicating), up that northeast road, as near as I could judge, about 50 feet from the shaft. They were just starting this one. There was nothing else there; they were cutting this road. There was a switch road there. The gas he set off was in the northeast road in the straight road; in the one going straight up northeast. That is the one he was in, that northeast road up there (indicating); it was in there (indicating). They were starting this one up. The west had been cut in just about a foot; I can't say. The one shown east was not cut at all at that time. There was nothing else but this one straight road. As to how far that straight road ran beyond the place where they had taken a switch, I guess at it; I judge about 25 feet. The gas in that northeast road was right at the face, right up against the coal at the end of the road. There was no opening in that roadway out from it except the one going out where I was.

I desire to correct my statement in cross-examination in reference to the conversation between Mr. Fulton and me. I asked
127 him about the reason he was not working. He had been laid off; he said he had been sick; and then I asked him, I said: "Has Callegary started work yet or not?" And he said it was a pity a few more of the dagoes —— —— did not get burned; it would learn them some sense. He said he went in there probably a hundred feet, he said, on the same morning Callegary got burned, and didn't put the gas off either. He went in with his lamp just the same and bailed water out of there. He didn't state particularly as to how he went in.

Recross-examination.

By Mr. HALEY:

Mr. Fulton didn't tell me when it was he went into that room. He said just before Callegary got burned. He said it was on the same day—same morning Callegary was burned. I remember now that he said it was the same morning Callegary was burned. He said he probably went a hundred feet farther than 'Gary. He said it was the same road 'Gary was burned. He did not exactly name the direction of the road, but he said he went in the same road that 'Gary was burned in. In reply to that, leading down to that name that he called 'Gary, he said that it was a pity that a few more of them didn't get burned; it would learn them something. He said that he went in there, right ahead of 'Gary before he got burned, and bailed water out, probably a hundred feet farther, and he didn't put the gas out. That is just as near as I know the words he said, and all I recollect about it.

Q. What did he say about having his lamp on him when he went in?

A. He had his lamp.

Q. What did he say about his lamp; did he say he had his lamp?

A. No, sir, he didn't.

Q. Did you say a little while ago—what you said was he went in with his lamp?

A. He couldn't put it off.

Q. I ask you what you said. Didn't you tell the jury he
128 went in with his lamp a hundred feet or so and bailed water out?

A. I am not sure.

Q. Do you remember whether you said it or not?

A. That he told me that he had his lamp?

Q. Do you remember you made that statement within less than two or three minutes?

A. No, I don't know I made that statement.

Q. I ask you if you remember; you say you don't. What is your recollection about your saying he had his lamp?

A. I said he must have went in with his lamp. He said he didn't put it off, so he must have had his lamp; that is the point of that.

Q. Did you say he went in there with his lamp a hundred feet and bailed water out before 'Gary was hurt?

A. I don't think I said he said it; he told me he went in and he said he didn't put the gas out.

Q. Did you say he went in with his lamp?

A. I don't know.

Q. Do you remember?

A. I don't think I said it.

Q. I ask you if you remember or not; I ask you if you remember?

A. I tell you I don't think I did.

I left these things that I now state to Mr. Sidley out when you examined me, because you went a little too fast, I guess. If you go a little slower, I can remember; I think you are a little fast.

129 MOSES CAPET, a witness produced in behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIDLEY:

My name is Moses Capet. I reside at Coal City, Grundy County, Illinois, and am a miner employed by the Wilmington Star Mining Company. I have been engaged in mining altogether about twenty-seven years. I have done all kinds of mining work, digging coal, sinking shafts, and timber man, and do everything. I knew Samuel Fulton in his lifetime. I have known him a few years, I guess. I worked with him in No. 6. He worked on the second shaft, and I worked on the main shaft when I was sinking. I was in the employ of the Wilmington Star Mining Company when Mr. Fulton was killed in January, 1901. I had been working for the Company about a couple of years. I don't know how long Mr. Fulton had been working in that shaft No. 6 where he was killed; may be six months. I am not sure. He stopped on the second shaft, on the air shaft. He lay track in the main shaft. He had been working in that shaft No. 6 about six months before he was killed. He sunk the air shaft, and then he laid track in No. 6. He had laid track in all the main roads. I worked with him sometimes in that mine before he was killed. I had worked with him in the west roadway in that mine before he was killed. I don't know how long before the accident. Three or four or five or six times before the accident. I don't know for sure. I had worked in the west roadway with him before the fan was put in, and had worked with him in that west roadway when he was going in there. Mr. — and Sam Fulton brushed the gas away from the roadway. We were brushing gas out of that west roadway. I don't know the day he was killed. I know it was in January. It was on a Sunday. I was at the mine that day when he was killed. I was there to put up an air box, to put up air boxes for air, me and Ed Pierard. Johnnie Wilson, the mine man-
130 ager, told me to go there that day. At the mine were five men, me, Ed Pierard, Sam Fulton, Paul Schmidt and Johnnie Wilson, five. When we went down in the shaft, we started to work. Ed Pierard went down in the mine with me. When I went down in the mine I stopped to dig some holes and get some pieces of board on the side to make place for the air boxes. I started to get some 2x4's to fix the air boxes in the south roadway, from the bottom. Me and Ed Pierard go down in the mine first, and the other fellows go down after them. I don't know for sure how long. I had no watch. I don't keep time. When they came down we looked for to start the fan; Johnnie Wilson, me, Ed Pierard, Sam and Schmidt helped start the fan. After the fan was started I went back to the same road again, south. I went back right away after I oiled the fan, and got good start. Pierard went 25 or 30 feet farther than me in the south roadway. Schmidt went with Ed Pierard in the south road. They were there when I came in. When I went in Fulton was on the plate at the bottom of the shaft. Wilson was on the bottom, too, on the south side of the shaft, across by the fan engine.

After I went into the south roadway, leaving Fulton and Wilson out on the plate, I got some 2 by 4's to put in the holes to bear the air boxes. I got the 2x4's on the bottom. I went out to the bottom again after I had got in, and I got the 2x4's right in the hind end, in the end plate where the south roadway comes out to the plate. When I went out to get that 2x4, I was close by Mr. Wilson and Mr. Fulton. I heard only a couple of words said at that time. Wilson said the words to Sam Fulton. The words were, "Here, take a time."

Q. What is that?

A. "Take a time."

I took my 2x4's and go back to the same place. I didn't hear any further conversation then. When I went back with my 2x4's,
Wilson was right on the bottom with Sam Fulton. He was
131 in the south entry afterwards. He came in may be a couple
of minutes after that conversation; I don't know how long. I was in the south entry about fifteen feet from the bottom, cutting some 2x4's. I was going to put these in the side to hold the boxes up, on the left-hand side which stretches out. That is, on the east. When Wilson came in, he hold that 2x4 piece while I cut it. He hollered to Schmidt. I don't know what he say to Schmidt; told him to help Sam Fulton. When he hollered to him, Schmidt was about 25 feet farther south in the south roadway with Ed Pierard, and when Wilson called him, Schmidt passed by us and went to the bottom. Wilson stayed there with him. I don't know for sure whether he go to the bottom or not. When Wilson called Schmidt, Schmidt was working with Ed Pierard. After Wilson called him, Schmidt go to the bottom.

Q. What did Wilson do?

A. That is before Wilson came to me. That is before, when he called Paul Schmidt.

Q. Where was Wilson when he called Schmidt?

A. He is there on the bottom, and he come after Schmidt go past there; understand?

Q. Well, I don't quite understand, no.

A. He hollered Paul Schmidt to come. Paul Schmidt come by me.

Q. Who was on the bottom?

A. Wilson.

Q. Wilson was on the bottom?

A. And Sam Fulton.

Q. And Sam Fulton?

A. Yes.

Q. And then he called to Schmidt?

A. Called to Schmidt there before he came to me, before Wilson came with me.

Q. Now after—what were you doing when Wilson called Schmidt?

A. I was cutting 2x4.

Q. When did Wilson come in where you were, in the south entry?

A. When?

Q. Yes.

A. I don't know what you mean.
132 Q. Well, he called to Schmidt, you say?
A. Yes, called to Schmidt.
Q. Now, after he called to Schmidt, Schmidt came out?
A. Yes, sir.
Q. What did Wilson do when Schmidt came out?
A. Well, may be he talked with him, what he had to do. I don't know what he said. Wilson then came with me to help me.
Q. Who did?
A. Wilson.
Q. Came in to help you?
A. Yes.
Q. How soon did he come in to help you?
A. Oh, may be a few minutes after.
Q. What did he do?
A. He held some 2x4 and cut it, because it swing all over, you know, on top of the boxes.

He stayed there with me fixing the boxes may be five or six minutes, and then the explosion came and knocked me down and put out our lights. After the explosion I looked to get a light, and I couldn't find my lamp. I got matches from my pocket. The other fellow is away first. I can find no lamp. It is dark there. I got some matches and lit it and find my lamp there. Then I went west that way and found a man got burned. I found Schmidt in there and took him from the bottom and took him on top. After we got on top I go down again and see where Sam Fulton was. I help him about an hour or two after. I don't know what time. We took him on top right away.

Cross-examination.

By Mr. HALEY:

I can't understand everything in the English language. I speak French. There are some words said in the English language that I don't understand. On the Sunday morning that Mr. Fulton was killed, I got to the mine on the top a little before seven o'clock.
133 We go down after seven. Ed Pierard went with me to the mine. It was about five minutes after seven when we go down. The engineer that ran the engine was Charlie Bromley. He was there when we got there and was running the engine. I think Bromley started to work about eight o'clock in the morning. I don't know what time he started that time. He was at the mine when we came out. I don't remember at seven o'clock. I don't know the engineer that let us down. I was there at seven o'clock. I can't remember if Bromley was the fellow that was there at seven o'clock. I know he was on top when we came up after Mr. Fulton was called.
Q. When did you come up out of the mine. How long did you stay there that morning?
A. Fulton is dead right away the first time.
Q. Did you come up when Fulton was brought up?

A. No, we take Paul Schmidt.
Q. Did you come up with Schmidt?
A. Yes, sir.
Q. And Bromley was there at that time, was he?
A. Yes, sir, he was there.

It cannot be after eight o'clock, I don't think. We start at seven. It is quite a time till we go down, take the things off the cage and start the fan; and Bromley was there when we brought Schmidt up. We brought Schmidt up right when he was hurt, and Bromley was the engineer.

Ed Pierard went down with me in the mine. The fan was not going when we went down. I don't know, I am sure, how long that fan had been in place there in that mine before that time. My recollection is three or four weeks, I don't know how long, may be more and less. After it was put in, it was kept running while the men were at work, and it was started before the men came into the
mine every morning. We depend upon that fan to take the
134 gas out of the mine. When Pierard and I went down the
first thing that morning we did not start the fan. I know about how the fan was started. There is a valve on the pump—close to the pump, and one on the fan engine. As to the kind of apparatus there was to start the fan,—one with the round on the fan, and the other we have to open. We start with the wrench and open with the fingers. We couldn't open it with out fingers unless we had a wrench to start it. I don't know where the wrench was that morning. I didn't look for it. They got one on top; they couldn't find the one that ought to have been down below. Johnnie Wilson looked for it. I didn't make any search for it. I don't know whether Pierard looked for it.

Q. But Wilson did look for it, did he?
A. Yes, he went up on top and got one.

There was no one there at the mine when I got there that morning. To give the signal to start the cage down, so that you could go into the mine, you got a wire, a bell to the engine. Us fellows didn't take anything down with us. As soon as we got down there we got the 2x4's and started to work. Pierard started to dig a hole in the wall, and I commenced sawing the 2x4's and dug some holes too. We had been there 15 or 20 minutes before anyone else came down.

Q. You don't know whether it was 15, 20, 30 or 35 minutes, do you?
A. No.
Q. But you were down there at work?
A. Yes.
Q. And how long you were at work, you don't remember, before some one else came down?
A. Yes.

The first persons I saw at the bottom of the shaft were Schmidt, Sam Fulton and Johnnie Wilson. I don't know for sure if they
came at the same time. I saw them on the plate. I am not
135 sure whether they came down separately or came down together. All I remember about that is that I saw them down

there together at the same time. Me and Ed Pierard took all the tools off the cage, and some rails and some switch, put them on the plate and some on the cars. The plate is where you put the car, to put the car on the cage. It is a small piece, a square about two feet square. It is a floor of iron plates. You can switch a car around on it, turn it around any way you want. Pierard and I helped to take the stuff off of the cage and put it on the car on the side. There were some switches on it. There may be some little railroad rails in the bottom. I don't know. I never loaded any rails on the car. I don't know if we got any rails on the bottom or not. I don't remember whether there were any rails on the car or not. I know we got switches. The next thing done after I had helped unload the cage was that the men came down. I don't know for sure what happened after the men came down. As to starting the fan, that is what we start, every one. Johnnie Wilson did the work of starting the fan. He is away to the pump and try to open the valve, and he could not do it.

Q. Did he turn on the valve that had the little wheel on the top?

A. On the top?

Q. Was not there a valve there with a wheel on it?

A. That wheel is on the fan.

Q. You can turn the wheel, and that opens that, doesn't it?

A. Yes, sir.

Q. But the one that didn't have any wheel on, he tried to turn that and he couldn't?

A. He could not because he had no wrench.

Q. And then what did he do?

A. He is going on top. He say, "I will be back right away."

136 Q. And he came back with the wrench and finally turned back and then the fan had the steam?

A. Yes, sir.

I helped to start the wheel, that big one where the bolt goes in, and then the fan runs. After the fan started, I oiled the fan and the engine. At that time Pierard was there on the bottom with me, and Wilson was on the pump. Sam Fulton was there with us, and Schmidt. After that I go to the south entry. We pulled the edge of the bottom about 150 feet from the boxes.

Q. You were about 14 or 15 feet in, and where was Pierard?

A. About 25 feet further.

I don't know who went in first, Pierard or I; both together, and Schmidt too. I think Schmidt go after Ed. I don't recollect whether he did or not. I don't remember at all whether it was before I went in or after. Schmidt was helping Ed Pierard.

Q. Wilson and Fulton were in at the bottom or in the opening?

A. Came in on the bottom. I don't know what he is doing there.

Q. Was there any talk around there before you went in?

A. Before?

Q. Yes.

A. Well, Johnnie Wilson came after I came in.

Q. I know, but was there any talk between Fulton and Schmidt before you went in?

A. I don't know, sometimes; what?
Q. Do you remember if anything was said there at all?
A. No.
Q. You don't remember any of the conversation there at the bottom, do you?
A. I remember one after, after I go in the bottom. I hear him say take his time.
137 Q. You hear that at the bottom?
A. Yes, that is what I hear.
Q. What was that now?
A. What?
Q. What did you hear?
A. "Take a time."
Q. Take his time about what?
A. Oh, I don't know for sure.
Q. What was Fulton doing at the time?
A. He is there with Wilson.
Q. What was he doing? Handling anything? Had he not a rail in his hand?
A. Nothing at all.
Q. Or props or anything of that kind?
A. No.
Q. You are sure he didn't say to take your tools, did he?
A. No.
Q. You don't understand English very well?
A. I understand take your tools, or take your time, too.
Q. You understand take your tools or take your time?
A. Sure.
Q. And there was nothing said about tools?
A. No.
Q. And this man was doing nothing at the time, was he, Fulton?
A. Nothing at all, sir.
Q. And Wilson was not doing anything?
A. No, sir; stand up in the bottom, that is all.
Q. You did not hear what they were talking about; you didn't know what they were talking about?
A. No, I hear talk from them, that is all, When I take that piece 2 x 4 to this work and I go back.
Q. Did you at that time look to see what either of them were doing?
A. I got no business to do that. When a man talk I have nothing to say.
Q. Sir?
A. When some man talk the two together, I got nothing to say there.
Q. You have no right to listen to a conversation?
138 A. No, I have my work.
Q. Then you had no right to hear what was testified to here, when you heard him say take his time?
A. When you pass one man, if he talk something, you can hear

what he say. If you stay a little longer, you can hear all that he say. Well, I not stay long enough to hear him.

Q. Then as a matter of propriety you did not stay to listen any more?

A. I hear "take a time," and that is all they say.

Q. You just listened to that much?

A. Yes.

Q. What was said before, and what was said after, you did not hear?

A. No.

Q. Because if you waited there, you would be doing what you think would be wrong, listening to a conversation you had no right to hear. That is the idea, is it?

A. I don't know what you mean.

Q. Now, after having heard that much, which I suppose you could not help hearing——

A. No, nothing at all.

I then went back to the south room and started sawing wood to put in. It couldn't be very long after that before I heard Wilson call Schmidt, may be a couple of minutes after that; it could not be five minutes; it might be two or three. He called Pierard that is all. When he called him, he passed by me and went right to the bottom and I still continued with my work. Wilson came right along in after that. I don't know about how many minutes; a couple of minutes. It is pretty hard to count a minute. He came sometime afterwards. After he came in, Johnnie Wilson he held the piece 2x4 when I cut it. It was swinging on top of the air box. Johnnie and I were at work there, and the other men, when the explosion came and threw us down. I didn't see Schmidt and Fulton push the car out; I never saw them after I went in to cut the wood.

139 Q. You did not see them after you heard these words, "Take your time?" That is the last you heard or saw or paid any attention to until Wilson passed Schmidt. Then after a while, you can't tell how long, Wilson went in there, and about the next thing was the explosion. That is about the way you recall it?

A. Yes, sir.

It knocked me down. I don't know who got the light first after the explosion. After the explosion I saw Schmidt 25 or 30 feet; 25 on the west road, may be 25 or 35 feet on the west road from the bottom. He was crawling on his knees. I went back to help carry Fulton. We found Fulton, I don't know for sure, may be 50, 60 or 55 feet from the end of the road. I don't know how much. When I saw Sam Fulton he was on top of the air box. I don't know who put him on, because Johnnie was there first, and Johnnie Wilson put Sam on top of the air boxes, you see. The car was away there some place on the road. I don't know where. I don't know how far it is exactly. This is a plat of the mine (indicating). I have seen it lots of times in the shops. We keep some in the shop all the time, on the shelf. That had to be one. I am familiar with this (indicating). That is the air shaft over here to the east, and this (indicating) is the bottom here, and here is the west roadway.

Q. Now which of the two roadways did you find?
A. This straight west.
Q. That would be the farther south of the two roadways, the south roadway of the two westerly roadways, this, here?
A. Yes, that is the straight west.
I don't know how far back I found Fulton; here some place, top of the boxes. I can't tell exactly. About from half the way in. The air box was broken here. The car was about here some place. It was not farther in than Fulton. The car was there on the
140 side. It was farther west than Fulton. The rails and ties were off the track. The rails were by the car. Some was off the road. I don't know whether any of the rails were on the car or not. Some props were there yet. I don't remember whether the rails or points were on the car. Where Sam Fulton sat on the car, the air boxes were all smashed, all the way in farther. I don't know how near to where we found Fulton the boxes were broken, because we took some off and took him on top. He was about half way down the road. From half way down the road, the boxes were broken clear out down to the end.

Redirect Examination.

By Mr. SIDLEY:

Mr. Wilson was standing on the bottom at the time that he called to Schmidt. Wilson called Schmidt, and Schmidt came in and talked to him, and after he came to me. When Wilson called Schmidt, Schmidt was back in the end in the south, and he came out then when Wilson called to him. He went out to where Wilson was. After Schmidt got there, it was a few minutes before Wilson came in to where I was. I don't know how much. After Wilson called to Schmidt and Schmidt went out to where he was, I see Johnnie Wilson there and Schmidt. Everybody — there on the platform.
Q. I am talking now about the time that Wilson called Schmidt out to help. You understand that?
A. I don't know if he was calling Fulton or not.
Q. Now Schmidt went out to the bottom where Fulton was or to where Wilson was.
A. In the bottom too.
Q. Wilson was at the bottom too?
A. Yes.
Q. Now did you see them standing there together?
A. He is there on the bottom, right at the south.
Q. Right at the south?
A. Yes, sir.
141 Q. Now what I want to get at is this: How long was it after Schmidt came out to where Wilson was, before Wilson came in to where you were?

The COURT: He said a few minutes, five or six minutes.
Mr. SIDLEY: No, now I want to correct that. I think there is a misapprehension.
(Question read.)

A. A few minutes.
Q. Now did you hear any conversation at that time between Schmidt and Wilson?
A. No.
Q. You didn't hear any?
A. Nothing at all.
Q. Now, when Wilson came in where you were, how long was it after that that the explosion occurred?
A. May be five or six minutes after.

Mr. SIDLEY: The Court, I think, was mistaken on that point.
Mr. HALEY: You don't remember the number of minutes. You just guess at it.
The WITNESS: No, I don't keep track of that.
Counsel for the defendant thereupon offered in evidence and read to the jury the præcipe in the case of Leopold Schmitz *vs.* Wilmington Star Mining Company, in which his deposition read in evidence was taken, for the purpose of showing the interest of said Schmitz, said præcipe showing that the suit was an action on the case for $10,000.
Counsel for defendant thereupon further offered in evidence and read to the jury the certificates issued by the Illinois State Mining Board to the witnesses Pierard and Wilson, which were referred to in their preceding testimony, which certificates were respectively as follows:

142 No. 194.

STATE OF ILLINOIS:

Certificate of Competency.

State Mining Board.

Mine Examiner.

This Certificate is issued to Edward Pierard of Coal City, County of Grundy, Illinois, who having passed the necessary examination is hereby qualified to act as Mine Examiner, in any mine in this State.
Given at Springfield, this 10th day of December, 1900.

[Seal of Illinois State Mining Board.]

R. NEWSAM, *President.*
PATRICK McCANN, *Vice President.*
JAMES TAYLOR.
COCHRAN JOHNSTON.
HUGH MURRAY, M. E.

Age 27, Birthplace Belgium, Mining Experience, Fifteen Years.

143 No. 54.

STATE OF ILLINOIS:

Certificate of Competency.

State Mining Board.

Mine Manager.

This Certificate is issued to John Wilson of Coal City, County of Grundy, Illinois, who having passed the necessary examination is hereby qualified to act as Mine Manager, in any mine in this State.

Given at Springfield, this Twelfth day of April, 1900.

[Seal of Illinois State Mining Board.]

R. NEWSAM, *President.*
PATRICK McCANN, *Vice President.*
JAMES TAYLOR.
COCHRAN JOHNSTON.
HUGH MURRAY, M. E.

Age 45, Birthplace Scotland, Mining Experience, Thirty-five Years.

144 Defendant here rested.

The foregoing is, in condensed form, all the evidence offered or received on trial of this cause.

And thereupon the defendant moved the Court in writing that the jury be instructed to find the defendant not guilty, which motion is in the following words, to-wit:

"MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

"Now comes the defendant, by Holt, Wheeler & Sidley, its attorneys, at the close of all the evidence offered in this cause, and moves the Court to instruct the jury to find the defendant not guilty.

HOLT, WHEELER & SIDLEY,
Attorneys for Defendant."

And the defendant by its counsel then and there stated to the Court, as and for one of its grounds for said motion to instruct the jury to find the defendant not guilty, that the provisions of the Mining Act of Illinois upon which this action is based, and upon which each of the counts is based, were contrary to the Fourteenth Amendment of the Constitution of the United States to the effect that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due

process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

But the Court overruled said motion to instruct the jury to find the defendant not guilty; to which ruling of the Court the defendant by its counsel then and there duly excepted. And the Court refused to instruct the jury to find the defendant not guilty; to which ruling of the Court in refusing to give said instruction the defendant by its counsel then and there duly excepted.

145 Thereupon the Court charged the jury as follows:

The COURT: Gentlemen of the Jury: It is your duty to pass upon the facts, and the facts alone. Whatever remarks the court has made or may make in reference to the facts you are not to consider. You are the sole judges of the facts in every law suit. That is the duty of the jury. The court has the right to comment in the Federal court upon the facts, but this is not to influence the jury; you are the judges upon that question. But it is otherwise as to the law. You are—In this kind of case in every case in the Federal courts it is your duty to take the law from the court. It is not your duty to criticise it, or to find fault with it, but to follow it and to enforce it as given by the court. It is neither for you or for me to try to determine whether the law is a good law or a bad law. Your sworn duty is to enforce the law—the law as it is written, and the law as it is given to you by the court.

Now, in this kind of a case, it appears, as has been stated by Counsel, that the Legislature and the law making power of the State of Illinois has passed a law framed peculiarly for he protection of miners—coal-miners and other kinds of miners. They have changed the rules of the Common Law and made the rules of the Statute Law as applicable to the case of master and servant, to negligent cases. This law, so far as applicable to this case, is in substance as follows: It provides for a mine manager and his duties; and among other things it has reference to ventilation. It provides that it shall be the duty of the mine manager to see that cross-cuts are made at proper distances apart to secure the best ventilation at the face of all working places, and that all stoppings along air-ways are properly and promptly built. He shall keep careful watch over all ventilating apparatus and the air-currents in the mine, and in case of accident to fan or machinery by which the currents are obstructed

146 or stopped, he shall at once order the withdrawal of the men and prohibit their return until thorough ventilation has been re-established. It provides also for a mine examiner, and the duties of the mine examiner. A mine examiner shall be required at all mines. His duty shall be to visit the mine before the men are permitted to enter it, and, first, he shall see that the air current is travelling in its proper course and in proper quantity. He shall then inspect all places where men are expected to pass or to work and observe whether there are any recent falls or obstruction in rooms or roadways, or accumulations of gas or other unsafe conditions. When working places are discovered in which accumulations of gas, or recent falls, or any dangerous conditions exist, he shall place a conspicuous mark thereat as notice to all men to keep out, and at

once report his finding to the mine manager. No one shall be permitted to remain in any part of the mine through which gas is being carried into the ventilating current, nor to enter the mine to work therein, except under the direction of the mine manager, until all conditions have been made safe. Throughout every coal mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein, and such ventilation shall be produced by a fan, or some other artificial means.

There is also a provision, and counsel for the defence has called attention to that fact, that it shall be unlawful for any miner, workman or other person knowingly or carelessly to injure any shaft, safety lamp, instrument, air-course, or battrice, or to obstruct or throw open any airway, or carry any open lamp or lighted pipe or fire in any form into any place worked by the light of safety lamps, or within five feet of any open powder, or to handle or disturb any part of the hoisting machinery, and in cases of failure to
147 follow that law as it is made penalties and punishments are provided.

For any injury to person or property, occasioned by any wilful failure to comply with any of its provisions, a right of action shall accrue to the party injured for any direct damages sustained thereby. You will notice that it is for "wilful violations" a right of action lies for "direct damages." And, in case of loss of life by reason of such wilful violation as aforesaid, a right of action shall accrue to the widow of the person so killed, his lineal heirs or adopted children, or to any other person or persons who were, before such loss of life, dependent for support on the person or persons so killed, for a like recovery of damages for the injuries sustained by reason of such loss of live or lives, not to exceed the sum of five thousand dollars.

Then again, it is provided in this Act that the words "Mine" and "coal mine," used in their general sense, are intended to signify any and all parts of the property of a mining plant, on the surface or underground, which contribute, directly or indirectly, under one management, to the mining or the handling of coal.

Now, while this is a Federal Court, and while that law is to govern this court, the same as in the State Court, the Declaration filed in this case, the cause of action, as set out by the plaintiff, and upon which they must rely, contains eight different counts, or eight different grounds of action, which, under the law, can be tried together in one. In the first count here, as presented here, they rely upon the statement that the defendant—that on the 22nd day of January, 1901, the deceased worked as an employé for the defendant
148 in a certain coal mine in Grundy County; that it then and there became and was the duty of the said defendant in the management and operation of said coal mine to maintain therein currents of fresh air sufficient for the safety of all men and animals employed therein, by the statute in such cases made and provided; and that said defendants were wholly regardless of its duties; that it wilfully and knowingly —, and as a direct — of that the death of the deceased followed.

The duty charged in the second count is that it was the duty of the

said defendant in the use, management and operation of said coal mine to see that inside the coal mine cross cuts were made at proper distances apart to secure the best ventilation at the face of all working planes as by the statute in such cases made and provided, and they failed to do that, and as the result the death of Fulton followed.

The count charges that their duty was in the use, management and operation of said coal mine to see that all stoppings along air ways inside the coal mine were properly and promptly built, as provided by the Statute of the State of Illinois, but they failed to perform that duty and as the result the death of the deceased followed.

In another count they charge that the duty was—the duty of the said defendant in the use, management and operation of said coal mine, to keep careful watch over all ventilating apparatus and air currents, and in case of accident to fan or machinery by which said currents were stopped, he should at once order the withdrawal of the men then inside the coal mine, and prohibit their return thereto until thorough ventilation had been re-established, and they charge that they did not do that, and the death of the deceased followed.

149 Another count they charge that it then and there became and was the duty of the defendant in the use, management and operation of said coal mine to inspect all places therein where men were expected to pass or to work and observe whether there was then and there an accumulation of gas, especially before said Samuel Fulton and other employees were permitted to enter into said mine, and they charge that defendant did not do this duty and that through that this death in question followed.

Another count they charge that it then and there became and was the duty of the said defendant in the use, management and operation of said coal mine that it was the duty of the mine examiner to visit the said mine before the said Samuel Fulton and other employés were permitted to enter the same, to see that the air current in said mine was traveling in its proper course and in proper quantity, and they charge they wilfully failed to do that, and this death followed.

Another count they charge that the duty was of the said defendant in the use, management and operation of said coal mine, when working places were discovered in which accumulations of gas exist, the mine examiner shall place a conspicuous mark thereat as notice to all men to keep out, as by statute in such cases made and provided; they charge that they failed to do that duty wilfully, and as a result the death of the man in question followed.

The duty in another count charged is that it was the duty of the said defendant to refuse to allow the said Samuel Fulton in the said coal mine, to work therein, until all conditions in said coal mine should have been made safe, except under the direction of the mine manager, and they charge that they failed to do their duty in that regard wilfully, and that as the result thereof the death of Samuel Fulton followed.

150 You will observe that these charges and declarations are based upon the portions of the law to which I have called attention.

The defendant replies to these declarations, denying the statements of those several counts and you are to determine the questions of fact raised by the issue there joined.

If you believe from the evidence that any of the counts in that declaration are sustained by the preponderance of the evidence then it is your duty under the further instructions of the court to find for the plaintiff.

If you believe from the evidence that all the counts have not been sustained—if you believe, that is, that none of the counts have been sustained by the evidence you shall, under the further instructions of the court find for the defendant.

You are further instructed that under the laws of the State of Illinois a coal mine is a place first as described in the Statute I have read to you, and, second, it is a place below the surface of the earth where coals are taken out of the shaft or pit, and machinery used in raising and discharging coal therefrom, and if you believe from the evidence that prior to January 27, 1901, coal was mined, dug, or placed by the defendant on its mine, commonly known as Number Six, and thereafter raised by machinery to the surface of the earth for use in the business of the defendants, for sale or other proper business of coal mining, as you understand it from the definitions given to you here, and from what you know of your own general knowledge, then the defendant's mine Number Six comes within the provisions of the Mining Act of Illinois, and the defendant is liable to the plaintiff in this suit for the loss of any support she may have sustained, as shown by the evidence, and for any wilful failure on the part of the defendant to comply with any provisions of
151 the Mining Act of the State of Illinois, complained of in any one of the counts of the plaintiff's declaration read to you.

There seems to be some contention here on the part of defendant as to whether this was a coal mine; and as to whether it was in operation. I will submit that question of fact to you to determine, whether it was a coal mine in operation, under the instructions given to you. If it was not in operation, and coal was not taken out of there for use and treated as an ordinary coal mine, and it was not complete then, on that issue, it will be your duty to find for the defendant. On the other hand, if you believe it was a coal mine, and the law as read to you and here recited to you, covers that kind of a case, in the spirit and the letter and fact, of course upon that issue you will find for the plaintiff.

The jury are again instructed that under the law of the State of Illinois it is the duty of the mine manager to see that throughout every coal mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein, and if you believe from the evidence that the defendant in this case wilfully violated or omitted to comply with that statutory obligation, and that by and through its said violation and omission to perform its statutory duty the accident complained of in the said declaration or any count thereof occurred, and as the direct, proximate and immediate result thereof the plaintiff's deceased husband, Samuel Fulton, was killed, then you should find the issue for the plaintiff, and find the defendant guilty.

The plaintiff, in the various counts of her declaration, charges violations and omissions of certain statutory duties imposed upon the defendant herein as a mine owner by the provisions of the Mining Act of the State of Illinois; and if you believe and find from
152 all the evidence that the defendant in this case has wilfully violated, or omitted to comply with any of the said statutory obligations, as charged in any count of the plaintiff's declaration, and that by and through its said wilful violation of the Mining Act, or any of its said duties, to the extent complained of in one or more counts of the plaintiff's declaration, and that as the direct or proximate result, in the language charged or relied upon, the plaintiff's deceased husband, Samuel Fulton, was killed, then you should find the defendant guilty.

The jury are further instructed that if you find from all the evidence and under the instructions of the court that the defendant wilfully violated any of the provisions of the laws of the State of Illinois, as charged, in one or more of the counts of the plaintiff's declaration herein, and if such act or omission on the part of the defendant was the direct or proximate cause of the death of Samuel Fulton, then no contributory negligence, if any, on the part of the deceased will defeat the defendant's right to recover herein, and you should find the defendant guilty.

You are instructed that under the laws of this State in force at the time of Samuel Fulton's death it was unlawful for any miner or other workman in a mine to enter any part of the mine against caution, and such unlawful act was punishable by a fine not exceeding Five Hundred Dollars, or by imprisonment in the County Jail for a period not exceeding six months, or both, at the discretion of the court. You are further instructed that if you believe from the evidence that Samuel Fulton, just prior to the time that he was killed, was cautioned not to enter the west roadway until the fan had cleared out the gas therefrom and the mine manager, Wilson, had run up into said roadway with a safety lamp and tested the
153 air, or words to that effect, and that Fulton disregarded said caution, and entered said west roadway before the fan had cleared the gas therefrom and before Wilson had tested the air in said roadway with a safety lamp, and that as a result of so entering said roadway Fulton lost his life, then the plaintiff cannot recover in this action and your verdict must be for the defendant.

If you believe from the evidence that Wilson, the mine manager, directed Fulton to go into the west road way, and that said Fulton did so in obedience to such order, and such order was the proximate cause of Fulton's death, without the giving of which Fulton would not have been killed, then the jury is instructed that the plaintiff cannot recover in this case, and the verdict should be for the defendant.

You will note there that it follows, if you believe that this instruction, if there was one, to Fulton was the proximate cause of his death, note that in passing upon that question you must determine whether first, if there was gas there at that time and whether, if there was that was or was not the proximate cause of his death.

Now, by "proximate cause" is meant efficient cause. In other words, if the gas had not been there would his death have followed? And was gas being there necessary to his death? Or was the instruction, if there was one, their wilfully sending him there the thing which caused his death; which was the greater cause? That is a question of fact for you gentlemen to determine.

If you believe from the evidence that Samuel Fulton entered the part of the mine in which he was killed against or contrary to caution given him by the mine manager, Wilson, and if you believe that such action on Fulton's part directly contributed to his death, then you are directed to find the defendant not guilty, even
154 though you may further believe from the evidence that the defendant was guilty of one or more of the wilful violations of the mining act charged in one or more counts in the declaration.

Now, in passing upon that question as to whether mine manager Wilson gave the instruction that he said he gave, or whether he gave no instruction, or whether he told them to go you are to determine from what you saw of the witnesses, what you observed of the men, and their conduct upon the witness stand, and from their evidence in the case, and circumstances in evidence in the case, and how much of those stories you would believe.

It would be proper for you to take the number of witnesses in consideration, but it does not necessarily follow that one witness or two witnesses may not tell the truth while a greater number of witnesses may or may not be mistaken.

The defendant in this case is a corporation, and therefore can only act by and through its officers, agents or employees; and you are instructed, that any act or omission of any of its said officers, agents or employees done or omitted in the usual manner and course of their employment, and in the scope of their duties as such officers, agents or employees was the act or omission of the defendant; and if the jury find from all the evidence and under the instructions of the court such officers, agents or employees, or any of them, acting in the usual and ordinary course of their employment, and in the scope of their duties, did wilfully, and knowingly fail to comply with the provisions of the said Statute of Illinois declared upon in any count in the plaintiff's declaration, and such wilful failure to comply with the law as aforesaid is the proximate cause of the death of the deceased husband, Samuel Fulton, then you should find the issue for the plaintiff.

155 You are further instructed that it is your duty to try this case and to decide the same as though it were a case between two individuals. That the defendant, being a corporation is entitled to the same fair, unprejudiced treatment and consideration at your hands that a private person would be in like circumstances; and you have no right in considering this case, in any of its branches, to take into consideration that the defendant is a corporation, and for that reason discriminate against it either on the question of liability or the amount of damages, if you assess damages against it.

Neither are you to be influenced by the fact that the plaintiff is a woman, and that she has children; and that the trial is about a

dead person; nor to be influenced by your sympathies. But influenced by your judgment and your duty under the law and under the instructions of the court.

You are further instructed that the plaintiff in order to recover in this action must prove by the preponderance or the greater weight of the evidence that if the defendant has violated one or more of its duties under the Mining Act of this State, as charged, and that said Samuel Fulton was injured thereby, that the said violation was wilful on the part of the defendant.

You are further instructed that the word "wilful" as used by the court in its instructions, means a conscious act, or conscious omission to act on the part of the defendant; it implies no malicious or criminal intent. It means simply that the defendant knew what he was doing, and intended to do what it did, and it was free to do as it chose.

Where an owner, director or manager of a mine so constructs or equips his mine and knowingly operates it without conforming to the provisions of this Act he wilfully disregards its provisions
156 and wilfully disregards the safety of the miners employed therein.

The Statute herein involved is not a penal statute. The word "conscious," I think, and the word "intentional," and the word "knowingly" covers the meaning of the word "wilful," as used in that secton of the Statute. "Knowingly," and "Intentional."

You are further instructed that in order for the plaintiff to recover in this action it must appear from the evidence that some one of the facts charged against the defendant in the declaration was the proximate cause of Fulton's death. By the term "proximate cause" is meant an act or omission from which the accident naturally resulted, and which was an efficient cause without the happening of which Fulton would not have been killed.

You are instructed that by no act done or anything said by the court during the trial of this case does the court mean to influence the jury in the slightest degree, one way or the other, as to its judgment on the question of fact.

You are instructed as a matter of law that the plaintiff is not entitled to recover in this action any sum whatever as a penalty or fine against the defendant or by way of punishment, but that her damages, if upon the evidence and under the instruction of the court you find she is entitled to any, must be confined to such a sum as you believe from the evidence the decedent Samuel Fulton would probably have earned during the remainder of his probable life and have expended upon or for the benefit of the plaintiff and her children, together with the pecuniary value of said decedent's services in the attention to, care, education and superintendence of his children and family, if you believe from the evidence that there
157 is a reasonable certainty that the plaintiff and her children would have received any such services from the decedent during the remainder of his natural life, and further believe that there is evidence in the case from which the money value of such services can reasonably be estimated. In estimating the sum, if any, to

which the plaintiff is entitled under the foregoing instruction, you are to consider the age of the deceased, his education, business capacity, ability and disposition to labor, his habits of living and disposition towards the physical and mental welfare of his family, but you are not to consider, in reaching such estimate, the present pecuniary circumstances of the plaintiff.

You are also to consider if there is any evidence on the subject of wages he was able to earn and had been earning.

There is quite a large lee way of any amount under Five Thousand Dollars, if you conclude the plaintiff is entitled to a verdict, that is proper under the instructions and directions I have already given you.

You are further instructed that the plaintiff in this case is not entitled to punitive or exemplary damages, that is, damages by way of punishment to the defendant.

You are the sole judges of the credibility of the witnesses testifying in the case. If you believe from the evidence in this case that any witness knowingly testified falsely to any material facts in this case you have a right to disregard the entire evidence of such witness or witnesses, except in so far as the evidence of such witness or witnesses is corroborated by other credible evidence in the facts and circumstances appearing in the trial.

You are further instructed that the declaration filed in this case is merely the unsworn statement of the plaintiff and is not entitled to any weight as evidence, and should not be considered by you in the light of evidence in determining this case, as it is merely
158 a statement of what the plaintiff expects to be able to prove.

You are instructed that if you believe from the evidence in this case that the deceased Samuel Fulton came to his death by an accident without the fault of either party, then your verdict should be not guilty.

I believe that is all I desire to say.

And thereupon the Court, at the request of counsel for defendant, further instructed the jury as follows:

Gentlemen, If I called your attention to any section of the law that is not counted upon in the declaration, you are not to consider that in this case. You are simply to consider, and can only consider, the law as stated to have been violated in these eight counts of the declaration I have read to you and called your attention to.

159 Thereupon the defendant by its counsel then and there duly excepted to the ruling of the Court that no contributory negligence on the part of the deceased would defeat the plaintiff's right to recover herein, thereby excluding gross contributory negligence by the plaintiff's intestate as a defense, as shown by the following portion of the foregoing charge of the Court to the jury:

"The jury are further instructed that if you find from all the evidence and under the instructions of the Court that the defendant wilfully violated any of the provisions of the laws of the State of Illinois as charged in one or more of the counts of the plaintiff's declaration herein, and if such act or omission on the part of the defendant was the direct or proximate cause of the death of Samuel Fulton, then no contributory negligence, if any, on the part of the

deceased, will defeat the plaintiff's right to recover herein, and you should find the defendant guilty."

Thereupon defendant by its counsel also then and there duly excepted to the ruling of the Court in its definition to the jury of proximate cause, that if the presence of gas in the mine was necessary to the death of plaintiff's intestate, then Wilson's direction to such intestate to go into the west roadway of the mine would not be the proximate cause of his death, as shown by the following portion of the charge of the Court to the jury:

"If you believe from the evidence that Wilson, the mine manager, directed Fulton to go into the west roadway, and that said Fulton did so in obedience to such order, and such order was the proximate cause of Fulton's death, without the giving of which Fulton would not have been killed, then the jury is instructed that the plaintiff cannot recover in this case, and the verdict should be for the
160 defendant. You will note there that it follows, if you believe that this instruction, if there was one, to Fulton was the proximate cause of his death, note that in passing upon that question you must. determine whether, first, if there was gas there at that time; and whether if there was, that was or was not the proximate cause of his death. Now by proximate cause is meant efficient cause. In other words, if the gas had not been there, would his death have followed? And was gas being there necessary to his death? Or was the instruction, if there was one, their wilfully sending him there, the thing which caused his death; which was the greater cause? That is a question of fact for you to determine."

Thereupon the Court said, referring to the exception last above noted by counsel for defendant: "I said it was for them to determine what was the proximate cause, if there was an order for this deceased to go into the mine, or whether it was the gas being there. Let the instruction be what I state it now the last time, that covers it."

To which ruling of the Court, in so far as it made the question of proximate cause in this case turn upon the presence of gas in the mine, and the necessity of such presence for Fulton's death, defendant by its counsel then and there duly excepted.,

Thereupon the defendant by its counsel also then and there duly excepted to the ruling of the Court that the defendant was bound by the act of any of its agent or servants in respect to the matters complained of in this suit, as shown by the following portion of the foregoing charge of the Court to the jury:

"The defendant in this case is a corporation, and therefore can only act by and through its officers, agents or employees; and you are instructed, that any act or omission of any of its said officers, agents or employees done or omitted in the usual manner and course of their employment, and in the scope of their duties
161 as such officers, agents or employees was the act or omission of the defendant; and if the jury find from all the evidence and under the instructions of the Court such officers, agents, or employees, or any of them, acting in the usual and ordinary course of their employment, and in the scope of their duties, did wilfully and knowingly fail to comply with the provisions of the said Statute of Illinois declared upon in any count in the plaintiff's declaration,

and such wilful failure to comply with the law as aforesaid is the proximate cause of the death of the deceased husband, Samuel Fulton, then you should find the issue for the plaintiff."

Thereupon the Court, referring to the exception of defendant's counsel last above noted, said: "I will amend that by saying any agent, employe, or whatever other word to indicate officer, agent or employe that is the representative who has power to do the business of the defendant.

To which ruling of the Court, in so far as it held that the defendant would be liable in this suit for the act of any agent or representative other than the officers of the defendant, defendant by its counsel then and there duly excepted.

Threupon the Court, referring to the exception by defendant's counsel last above noted, said: "That is limited to the superiors—it is limited to the mine manager and the mine examiner."

To which ruling of the Court, in so holding and directing that the jury should find the issues for the plaintiff if they found from all the evidence and under the instructions of the Court that the defendant's mine manager or mine examiner acting in the usual and ordinary course of their employment in the scope of their duties did wilfully and knowingly fail to comply with the provisions of the Statute of Illinois declared upon in any count in the plaintiff's declaration, and such wilful failure to comply with the law
162 as aforesaid was the proximate cause of the death of the deceased husband Samuel Fulton, defendant by its counsel then and there duly excepted.

163 Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the first of the eight counts of her declaration upon which this action proceeds.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the second of the eight counts of her declaration upon which this action proceeds.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the third of the eight counts of her declaration upon which this action proceeds.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the fourth of the eight counts of her declaration upon which this action proceeds.

But the Court refused so to charge the jury as requested by
164 the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the fifth of the eight counts of her declaration upon which this action proceeds.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the sixth of the eight counts of her declaration upon which this action proceeds.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the seventh of the eight counts of her declaration upon which this action proceeds.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the eighth of the eight counts of her declaration upon which this action proceeds.

But the Court refused so to charge the jury as requested by
165 the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the first of the eight counts of her declaration upon which the action proceeds, for the reason that the Illinois Mining Act upon which said count is based imposes no liability upon the defendant for the violation of the Act therein complained of.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the

second of the eight counts of her declaration upon which the action proceeds, for the reason that the Illinois Mining Act upon which said count is based imposes no liability upon the defendant for the violation of the Act therein complained of.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the third of the eight counts of her declaration upon which the action proceeds, for the reason that the Illinois Mining Act upon which said count is based imposes no liability upon the defendant for the violation of the Act therein complained of.

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Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the sixth of the eight*h* counts of her declaration upon which the action proceeds, for the reason that the Illinois Mining Act upon which said count is based imposes no liability upon the defendant for the violation of the Act therein complained of.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

167 Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

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proceeds, for the reason that the Illinois Mining Act upon which said count is based imposes no liability upon the defendant for the violation of the Act therein complained of.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the eighth of the eight counts of her declaration upon which the action proceeds, for the reason that the Illinois Mining Act upon which said count is based imposes no liability upon the defendant for the violation of the Act therein complained of.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the first of the eight counts of her declaration upon which this action proceeds, for the reason that the provisions of the Illinois Mining Act upon which said count is based are contrary to the Constitution of the United States.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

168 Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

The jury are instructed that the plaintiff cannot recover under the second of the eight counts of her declaration upon which this action proceeds, for the reason that the provisions of the Illinois Mining Act upon which said count is based are contrary to the Constitution of the United States.

But the Court refused to so charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

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The jury are instructed that the plaintiff cannot recover under the seventh of the eight*h* counts of her declaration upon which this action proceeds, for the reason that the provisions of the Illinois Mining Act upon which said count is based are contrary to the Constitution of the United States.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

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The jury are instructed that the plaintiff cannot recover under the eighth of the eight counts of her declaration upon which this action proceeds, for the reason that the provisions of the Illinois Mining Act upon which said count is based are contrary to the Constitution of the United States.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

If you believe from the evidence that the death of Samuel Fulton resulted in part from his own gross negligence in view of his surroundings and his knowledge of the conditions existing in the mine

as disclosed by the evidence, then you are instructed that the plaintiff cannot recover herein.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

You are instructed that under the laws of this State in force at the time of Samuel Fulton's death it was unlawful for any miner or other workman in a mine to do any wilful act whereby the lives or health of persons working in mines or the security of the mine or machinery thereof was endangered, and such unlawful act was punishable by a fine not exceeding $500, or by imprisonment in the County jail for a period not exceeding six months, or both, at the discretion of the Court. You are further instructed that if you believe from the evidence that Samuel Fulton, at the time he
171 was killed, was engaged in a wilful act which endangered the lives or health of persons working in the mine with him or the security of the mine or its machinery, and that such wilful act on his part contributed to his death, then the plaintiff cannot recover in this action and your verdict must be for the defendant.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

If you believe from the evidence that the death of Samuel Fulton resulted in part from his reckless disregard of consequences in view of his surroundings and knowledge of the conditions existing in the mine as disclosed by the evidence, then you are instructed that the plaintiff cannot recover herein.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

Thereupon the defendant by its counsel then and there requested the Court to further charge the jury as follows:

If you believe from the evidence that the decedent Fulton just before the time of his death entered the mine to work therein under the direction of the mine manager, Wilson, then you are directed to find the defendant "not guilty," even though you may further believe from the evidence that all the conditions of the mine had not been made safe at such time, as charged in the declaration.

But the Court refused so to charge the jury as requested by the defendant, to which refusal the defendant by its counsel then and there duly excepted.

172 Thereupon the jury retired and thereafter returned a verdict for the plaintiff for Four Thousand Dollars, and the defendant entered a motion to set aside said verdict and for a new trial of said cause. Afterwards the Court overruled said motion, to which action of the Court the defendant by its counsel then and there duly excepted. And thereupon the defendant by its counsel moved the

Court to arrest the judgment in said cause, which motion the Court overruled, to which action of the Court the defendant by its counsel then and there duly excepted. And thereupon the Court entered judgment upon the verdict, and allowed time to the defendant to file its bill of exceptions herein; to which action of the Court in entering judgment the defendant by its counsel then and there duly excepted. And the Court thereupon directed the computing of interest upon the verdict from the date thereof and its inclusion in the judgment; to which action of the Court the defendant by its counsel then and there duly excepted.

173 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

MINNIE FULTON, Plaintiff,
vs.
WILMINGTON STAR MINING COMPANY, Defendant.

I, Solomon H. Bethea, Judge of the Circuit Court of the United States for the Northern District of Illinois before whom the above entitled case of Minnie Fulton *vs.* Wilmington Star Mining Company, defendant was tried, do hereby settle the foregoing as and for the Bill of Exceptions therein, and do hereby certify that the foregoing bill of exceptions contains all the evidence offered by either party on the trial of said cause, and all other proceedings had and taken thereon, material or in any way relevant to the rulings of the Court made upon said trial, or to the objections and exceptions made and taken by the respective parties upon said trial, which said rulings, objections and exceptions are in this said Bill of Exceptions shown and made manifest, and do hereby make the same matter of record in said cause.

In Witness Whereof, I have hereunto set my hand seal this twenty-ninth day of September, A. D. 1905.

S. H. BETHEA, *Judge.* [SEAL.]

O. K.
EDDY, HALEY & WETTEN.

(Endorsed:) Filed Sep. 29, 1905. Marshall E. Sampsell, Clerk.

174 And on to-wit: the twenty-ninth day of September, 1905, came the Wilmington Star Mining Company by its attorneys, Messrs. Holt, Wheeler and Sidley and filed in the clerk's office of said Court its certain Petition for Writ of Error and Assignment of Errors in words and figures following to-wit:

175 *Petition for Writ of Error and Assignment of Errors.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division. At Law.

WILMINGTON STAR MINING COMPANY, Defendant, Plaintiff in Error,
vs.
MINNIE FULTON, Plaintiff, Defendant in Error.

Petition for Writ of Error.

And now comes Wilmington Star Mining Company, defendant herein, and says that on the first day of August, A. D. 1905, the said Circuit Court of the United States entered a judgment herein in favor of the plaintiff and against this defendant, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this defendantprays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors so comlained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

HOLT, WHEELER & SIDLEY,
Attorneys for Defendant,
Plaintiff in Error.

176 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division thereof, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

MINNIE FULTON, Plaintiff, Defendant in Error,
vs.
WILMINGTON STAR MINING COMPANY, Defendant, Plaintiff in Error.

And now comes Wilmington Star Mining Company, by Holt, Wheeler & Sidley, its attorneys, and shows to the Court that in the record and proceedings of the Circuit Court of the United States in this cause and in the rendition of final judgment in said cause in favor of the plaintiff therein, there is manifest error in the following among other things, to-wit:

1. Said Court erred in overruling defendant's objection to the reading of the following question propounded by plaintiff's counsel to Leopold Schmitz, a witness on behalf of plaintiff, whose deposition was read in evidence upon said trial, to-wit:

"Q. While you and Wilson and Fulton were at the bottom of the shaft before you pushed the car, did Wilson tell Fulton or you to wait until the gas was out?"

And in permitting the reading of the said witness' answer to said question, to-wit:

"A. No."

2. Said Court erred in overruling defendant's objection to the reading of the following question propounded by plaintiff's counsel to said witness Schmitz in the course of his said deposition, to wit:

177 "Q. What did Wilson say to Fulton?"

And in permitting the reading of the following answer of said witness to said question, to-wit:

"A. Boss no tell to wait, but told to go."

3. Said Court erred in overruling defendant's objection to the reading of the following question propounded by plaintiff's counsel to said witness Schmitz in the course of his said deposition, to-wit:

"Q. State whether or not Wilson, the boss, said anything else to you and Fulton except to go.

"Q. What statement, if any, was made to Fulton by Wilson?

And in permitting the reading of the answer of said witness Schmitz to said questions as follows:

"A. Just tell me to go, that all."

4. Said Court erred in overruling the motion of defendant's counsel made at the close of all the evidence offered or received upon the trial of this cause, that the Court instruct the jury to find the defendant not guilty, which motion was in writing and in the words following, to-wit:

"MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

"Now comes the defendant, by Holt, Wheeler & Sidley, its attorneys, at the close of all the evidence offered in this cause and moves the Court to instruct the jury to find the defendant not guilty.

HOLT, WHEELER & SIDLEY,
Attorneys for the Defendant."

178 Said motion should have been granted and said instruction given to the jury for the following reasons with others, each of which is hereby separately assigned as a ground of error herein:

First. That the evidence introduced upon the trial of this cause wholly failed to support any of the counts of the declaration.

Second. The evidence introduced upon the trial of this cause showed conclusively either that Samuel Fulton, the deceased, went into the west entry of the mine where he was killed by direction of the mine manager Wilson, which direction thereby became the proximate cause of his death, or else that said deceased entered said west entry under circumstances which amounted to a wilful act on

his part whereby the lives and health of persons working in the mine and the security of the mine or its machinery became endangered, and in either of these cases the plaintiff was barred from a recovery herein.

Third. That none of the counts in the declaration state a cause of action against the defendant.

Fourth. That the provisions of the Illinois Mining Act upon which each and every of the counts in the declaration is based are contrary to the 14th amendment of the Constitution of the United States, to the effect that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws.

5. Said Court erred in its ruling that no contributory negligence on the part of the deceased, Samuel Fulton, would defeat the plaintiff's right to recover herein thereby excluding gross contributory negligence by said decedent as a defense as shown by the following portion of the charge of said Court to the jury, towit:

179 "The jury are further instructed that if you find from all the evidence and under the instructions of the Court that the defendant wilfully violated any of the provisions of the laws of the State of Illinois as charged in one or more of the counts of the plaintiff's declaration herein, and if such act or omission on the part of the defendant was the direct or proximate cause of the death of Samuel Fulton, then no contributory negligence, if any, on the part of the deceased, will defeat the plaintiff's right to recover herein, and you should find the defendant guilty."

6. Said Court erred in its ruling in the course of its definition to the jury of proximate cause, that if the presence of gas in the mine was necessary to the death of the deceased, Samuel Fulton, then the direction of the mine manager Wilson to such deceased to go into the west roadway of the mine would not be the proximate cause of his death, as shown by the following portion of the charge of the Court to the jury, to-wit:

"If you believe from the evidence that Wilson, the mine manager, directed Fulton to go into the west roadway, and that said Fulton did so in obedience to such order, and such order was the proximate cause of Fulton's death, without the giving of which Fulton would not have been killed, then the jury is instructed that the plaintiff can not recover in this case, and the verdict should be for the defendant. You will note there that it follows, if you believe that this instruction, if there was one, to Fulton was the proximate cause of his death, note that in passing upon that question you must determine whether, first, if there was gas there at that time; and whether if there was, that was or was not the proximate cause of his death. Now by proximate cause is meant efficient cause. In other words, if the gas had not been there, would his death have followed? And was gas being there necessary to his death? Or was the instruction, if there was one, their wilfully sending him there, the thing

180 which caused his death; which was the greater cause? That is a question of fact for you to determine."

7. Said Court erred in its ruling that the question of the proximate cause of Fulton's death turned upon the presence of gas in the mine and the necessity of such presence for Fulton's death, as shown in the following statement made by the Court in connection with that portion of its charge last above set forth; "I said it was for them to determine what was the proximate cause if there was an order for this deceased to go into the mine, or whether it was the gas being there. Let the instruction be what I stated now, the last time; that covers it."

8. Said court erred in its ruling that the defendant was bound by the act of any of its agents or servants in respect to the matters complained of in this suit as shown by the following portion of the foregoing charge of the Court to the jury:

"The defendant in this case is a corporation, and therefore can only act by and through its officers, agents or employees; and you are instructed, that any act or omission of any of its said officers, agents or employees done or omitted in the usual manner and course of their employment, and in the scope of their duties as such officers, agents or employees was the act or omission of the defendant; and if the jury find from all the evidence and under the instructions of the Court such officers, agents or employees, or any of them, acting in the usual and ordinary course of their employment, and in the scope of their duties, did wilfully and knowingly fail to comply with the provisions of the said Statute of Illinois declared upon in any count in the plaintiff's declaration, and such wilful failure to comply with the law as aforesaid is the proximate cause of the death of the deceased husband, Samuel Fulton, then you should find the issue for the plaintiff."

9. Said Court erred in its ruling that the defendant would
181 be liable in this suit for the act of any agent or representative other than the officers of the defendant as shown by the following statement of the Court made in connection with that portion of its charge last above set forth, "I will amend that by saying any agent, employee or whatever word to indicate officer, agent or employee; that is, the representative who has power to do the business of the defendant."

10. Said Court erred in its ruling that the jury should find the issues for the plaintiff if they found from all the evidence and under the instructions of the Court that the defendant's mine manager or mine examiner, acting in the usual and ordinary course of their employment in the scope of their duties, did wilfully and knowingly fail to comply with the provisions of the Statute of Illinois declared upon in any count in the plaintiff's declaration, and such wilful failure to comply with the law, as aforesaid, was the proximate cause of the death of the deceased husband, Samuel Fulton, as shown by the following statement made by the Court in its charge to the jury in connection with and in reference to that portion of its charge to the jury hereinabove set forth under the 8th assignment of error, and its amendment of such portion of such charge hereinabove set forth under the 9th assignment of error:

"That is limited to the superiors,—it is limited to the mine manager and the mine examiner."

11. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the first of the eight counts of her declaration upon which this action proceeds."

Said instruction should have been given for the reason that there was no evidence introduced upon the trial of this cause in support of the defendant's liability as charged in said count.

182 12. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the second of the eight counts of her declaration upon which this action proceeds."

Said instruction should have been given for the reason that there was no evidence introduced upon the trial of this cause in support of the defendant's liability as charged in said count.

13. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the third of the eight counts of her declaration upon which this action proceeds."

Said instruction should have been given for the reason that there was no evidence introduced upon the trial of this cause in support of the defendant's liability as charged in said count.

14. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the fourth of the eight counts of her declaration upon which this action proceeds."

Said instruction should have been given for the reason that there was no evidence introduced upon the trial of this cause in support of the defendant's liability as charged in said count.

15. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the fifth of the eight counts of her declaration upon which this action proceeds."

Said instruction should have been given for the reason that there was no evidence introduced upon the trial of this cause in support of the defendant's liability as charged in said count.

183 16. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the sixth of the eight counts of her declaration upon which this action proceeds."

Said instruction should have been given for the reason that there was no evidence introduced upon the trial of this cause in support of the defendant's liability as charged in said count.

17. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the seventh of the eight counts of her declaration upon which this action proceeds."

Said instruction should have been given for the reason that there was no evidence introduced upon the trial of this cause in support of the defendant's liability as charged in said count.

18. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the eighth of the eight counts of her declaration upon which this action proceeds."

Said instruction should have been given for the reason that there was no evidence introduced upon the trial of this cause in support of the defendant's liability as charged in said count.

19. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the first of the eight counts of her declaration upon which the action proceeds, for the reason that the Illinois Mining Act upon which said count is based, imposes no liability upon the defendant for the violation of the Act therein complained of."

20. Said Court erred in refusing the request of defendant's
184 counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the second of the eight counts of her declaration upon which the action proceeds; for the reason that the Illinois Mining Act upon which said count is based, imposes no liability upon the defendant for the violation of the Act therein complained of."

21. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the third of the eight counts of her declaration upon which the action proceeds; for the reason that the Illinois Mining Act upon which said count is based, imposes no liability upon the defendant for the violation of the Act therein complained of."

22. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the fourth of the eight counts of her declaration upon which the action proceeds; for the reason that the Illinois Mining Act upon which said count is based, imposes no liability upon the defendant for the violation of the Act therein complained of."

23. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the fifth of the eight counts of her declaration upon which the action proceeds; for the reason that the Illinois Mining Act upon which said count is based imposes no liability upon the defendant for the violation of the Act therein complained of."

24. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover
185 under the sixth of the eight counts of her declaration upon which the action proceeds; for the reason that the Illinois Mining Act upon which said count is based imposes no liability upon the defendant for the violation of the Act therein complained of."

25. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the seventh of the eight counts or her declaration upon which the action proceeds; for the reason that the Illinois Mining Act upon which said count is based, imposes no liability upon the defendant for the violation of the Act therein complained of."

26. Said court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the eighth of the eight counts of her declaration upon which the action proceeds; for the reason that the Illinois Mining Act upon which said count is based, imposes no liability upon the defendant for the violation of the Act therein complained of."

27. Said court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the first of the eight counts of her declaration upon which this action proceeds; for the reason that the provisions of the Illinois Mining Act upon which said count is based, are contrary to the Constitution of the United States."

28. Said Court ered in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the second of the eight counts of her declaration upon which this action proceeds; for the reason that the provisions of the Illinois Mining Act upon which said count is based, are contrary to the Constitution of the United States."

186 29. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the third of the eight counts of her declaration upon which this action proceeds; for the reason that the provisions of the Illinois Mining Act upon which said count is based, are contrary to the Constitution of the United States."

30. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the fourth of the eight counts of her declaration upon which this action proceeds; for the reason that the provisions of the Illinois Mining Act upon which said count is based, are contrary to the Constitution of the United States."

31. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the fifth of the eighth counts of her declaration upon which this action proceeds; for the reason that the provisions of the Illinois Mining Act upon which said count is based, are contrary to the Constitution of the United States."

32. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the sixth of the eight counts of her declaration upon which this action proceeds; for the reason that the provisions of the Illinois Mining Act upon which said count is based, are contrary to the Constitution of the United States."

33. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the seventh of the eight counts of her declaration upon which
187 this action proceeds; for the reason that the provisions of the Illinois Mining Act upon which said count is based, are contrary to the Constitution of the United States."

34. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"The jury are instructed that the plaintiff cannot recover under the eighth of the eight counts of her declaration upon which this action proceeds; for the reason that the provisions of the Illinois Mining Act upon which said count is based, are contrary to the Constitution of the United States."

35. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"If you believe from the evidence that the death of Samuel Fulton resulted in part from his own gross negligence in view of his surroundings and his knowledge of the conditions existing in the mine as disclosed by the evidence, then you are instructed that the plaintiff cannot recover herein."

36. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"You are instructed that under the laws of this State in force at the time of Samuel Fulton's death it was unlawful for any miner or other workman in a mine to do any wilful act whereby the lives or health of persons working in mines or the security of the mine or machinery thereof was endangered, and such unlawful act was punishable by a fine not exceeding $500, or by imprisonment in the County jail for a period not exceeding six months, or both, at the discretion of the Court. You are further instructed that if you believe from the evidence that Samuel Fulton at the time he was killed, was engaged in a wilful act which endangered the lives or health of persons working in the mine with him or the security of the mine or its machinery, and that such wilful act on his part con-
188 tributed to his death, then the plaintiff cannot recover in this action and your verdict must be for the defendant.

37. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"If you believe from the evidence that the death of Samuel Fulton resulted in part from his reckless disregard of consequences in view of his surroundings and knowledge of the conditions existing in the mine as disclosed by the evidence, then you are instructed that the plaintiff cannot recover herein."

38. Said Court erred in refusing the request of defendant's counsel to further charge the jury as follows:

"If you believe from the evidence that the decedent Fulton just before the time of his death entered the mine to work therein under the direction of the mine manager, Wilson, then you are directed to find the defendant "not guilty," even though you may further believe from the evidence that all the conditions of the mine had not been made safe at such time, as charged in the declaration."

39. Said Court erred in overruling the motion in arrest of judgment requested by counsel for the defendant, it appearing upon the face of the record that no cause of action against the defendant was stated in the declaration filed herein.

40. Said Court erred in rendering judgment in this cause against the defendant in the following respects with others, each of which is hereby assigned as a ground of error herein:

First. There is no evidence in the record of this cause sustaining the declaration or any of its counts.

Second. It conclusively appears from the evidence introduced upon the trial of this cause either that the deceased, Samuel Fulton, entered the west entry of the mine where he was killed, by direction of the mine manager Wilson, which direction thereby be-
189 came the proximate cause of Fulton's death, or, that Fulton entered the said west entry under such circumstances as amounted to a wilful act on his part whereby the lives and health of persons working in the mine and the security of the mine or its machinery became endangered, in either of which cases the plaintiff was barred from recovery herein.

Third. The declaration fails to state any cause of action against the defendant.

Fourth. The provisions of the Illinois Mining Act upon which each and every of the counts in the declaration is based are contrary to the 14th amendment of the Constitution of the United States, to the effect that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws.

41. Said Court erred in directing the computing of interest upon the verdict of the jury from the date of its rendition, and the inclusion of such interest in the judgment rendered.

Wherefore the said defendant, Wilmington Star Mining Company, prays that the judgment of the Circuit Court may be reversed.

HOLT, WHEELER & SIDLEY,
Attorneys for said Defendant, Plaintiff in Error.

(Endorsed:) Filed Sep. 29, 1905. Marshall E. Sampsell, Clerk.

190 And on to-wit: the twenty-ninth day of September, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of September 29, 1905.

Allowing Writ of Error.

Law. 26244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING CO.

Now on this day comes the defendant by Messrs. Holt, Wheeler & Sidley, its attorneys, and presents its petition for a writ of error to the Supreme Court of the United States with its assignment of errors and bond on writ of error in the sum of Five Thousand Dollars ($5000.) with Milford D. Buchanan, Gordon Buchanan and Dewitt W. Buchanan as sureties, which bond is approved by the Court and ordered to operate as a supersedeas; and it now appearing to the Court that said defendant had duly complied with the rules of the Supreme Court of the United States and of this Court, it is ordered that said writ of error be, and the same is hereby, allowed to have reviewed in the said Supreme Court of the United States the judgment heretofore entered herein, and that a writ of citation issue returnable within thirty days.

191 And on the same day to-wit: the twenty-ninth day of September, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain Bond on Writ of Error in words and figures following to-wit:

192 Know all men by these presents, That we, Wilmington Star Mining Company, a corporation organized and existing under the laws of the State of Wisconsin, as principal, and Milford D. Buchanan, Gordon Buchanan and Dewitt W. Buchanan, of Chicago, Cook County, Illinois, are held and firmly bound unto Minnie Fulton, of Coal City, Grundy County , Illinois, in the full and just sum of Five Thousand Dollars, to be paid to the said Minnie Fulton, or her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of August in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of Illinois, in a suit pending in said Court, between said Minnie Fulton, plaintiff, and said Wilmington

Star Mining Company, defendant, a judgment was rendered against the said Wilmington Star Mining Company, and the said Wilmington Star Mining Company, having obtained from said Court a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Minnie Fulton, citing and admonishing her to be and appear at the United States Supreme Court, to be holden at Washington, District of Columbia, within thirty days from the date hereof.

Now, the condition of the above obligation is such, That if the said Wilmington Star Mining Company, shall prosecute its writ to effect, and shall answer all damages and costs that may be awarded against it if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] WILMINGTON STAR MINING COMPANY,
By M. D. BUCHANAN, *President.*
MILFORD D. BUCHANAN. [SEAL.]
GORDON BUCHANAN. [SEAL.]
DE WITT W. BUCHANAN. [SEAL.]

Attest:
D. W. BUCHANAN, *Sec'y.*

Sealed and delivered in presence of
MARK A. FOOTE.
T. D. JORDAN.
C. L. MALLORY.

Approved by—
S. H. BETHEA, *Judge.*

(Endorsed:) Filed Sep-. 29, 1905, Marshall E. Sampsell, Clerk.

193 *Præcipe for Record.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

36244.

MINNIE FULTON
vs.
WILMINGTON STAR MINING COMPANY.

To the Clerk of the above entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the Supreme Court of the United States, under the writ of error heretofore allowed by said Court and include in the said transcript the following pleadings, proceedings and papers on file to-wit:

Transcript of Record from Grundy County Circuit Court, (omitting therefrom the three last counts of the orginal declaration).

Order of October 6, 1902 amending declaration.
Order of October 24, 1902, sustaining demurrer with leave to Plaintiff to amend declaration in five days.
Additional Count filed October 28, 1902.
Plea filed October 30, 1902.
Order of Oct. 30, 1902.
Order of Nov. 5, 1902, Leave given to file additional count as of October 28, 1902, etc.
Order of Nov. 14, 1902.
Seventh Additional Count filed Nov. 14, 1902.
Order of Nov. 22, 1902, extending time for defendant to plead to Additional Counts.
Order of Dec. 30, 1902.
194 Second amended first additional Count and Amended fifth and sixth additional counts.
Plea to second amended first additional count and amended fifth and sixth additional counts.
Stipulation filed January 19, 1903.
Order of March 27, 1905, cause called for trial and jury sworn.
Order of March 28, 1905.
Motion of Defendant to direct verdict.
Orders of March 29 and 30.
Judgment of August 1, 1905.
Order of August 16, 1905, extending time to perfect Writ of Error.
Bill of Exceptions.
Petition for Writ of Error and Assignment of Errors, filed Sept. 29, 1905.
Order of Sept. 29, 1905, allowing Writ of Error.
Bond on Writ of Error filed Sep. 29, 1905.
Said transcript to be prepare- as required by law and the rules of this Court and the rules of the Supreme Court of the United States and on file in the office of the clerk of the said Supreme Court of the United States, at Washington, before October 29, 1905.

HOLT, WHEELER & SIDLEY,
Attorneys for Plaintiff in Error.

(Endorsed:) Filed Oct. 9, 1905, Marshall E. Sampsell, Clerk.

195 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division*, *ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court and made in accordance with Præcipe filed in the cause entitled Minnie Fulton, Plaintiff *vs.* Wilmington Star Mining Company, Defendant, General Number 26,244, as the same appear from the original records and files of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District this twelfth day of October, 1905.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

196 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between Minnie Fulton, Plaintiff *vs.* Wilmington Star Mining Company, Defendant, a manifest error hath happened, to the great damage of the said Wilmington Star Mining Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of September, in the year of our Lord one thousand nine hundred and five.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL,
Clerk of the Circuit Court of the United States
for the Northern Dist. of Illinois.

Allowed by
SOLOMON H. BETHEA,
District Judge.

[Endorsed:] 26244. Supreme Court of the United States. Wilmington Star Mining Co. *vs.* Minnie Fulton. Writ of Error. Filed Sept. 29, 1905. Marshall E. Sampsell, Clerk. Copy deposited for the defendant in error in the Clerk's Office, U. S. Circuit Court, Northern District of Illinois.

197 UNITED STATES OF AMERICA, *ss:*

To Minnie Fulton, Greeting:

You are hereby cited and admonished to be and appear at a S preme Court of the United States, at Washington, within 30 da from the date hereof, pursuant to a Writ of Error, filed in t Clerk's Office of the Circuit Court of the United States for the Nort ern District of Illinois, wherein Wilmington Star Mining Compan is the Plaintiff in error and you are Defendant, to show cause, if a there be, why the judgment rendered against the said Plaintiff as the said Writ mentioned, should not be corrected, and why spee justice should not be done to the parties in that behalf.

Witness, the Honorable Solomon H. Bethea, District Judge t 29th day of September, in the year of our Lord one thousand ni hundred and five.

S. H. BETHEA, *Judge.* [SEAL.]

198 We hereby accep service of the within writ.

EDDY, HALEY & WETTEN,
Attorneys for Minnie Fulton.

Oct. 4, 1905.

[Endorsed:] No. 26244. Supreme Court of the United Stat Minnie Fulton *vs.* Wilmington Star Min'g Co. Citation to the S preme Court of the United States. Circuit Court of the Unit States, Northern District of Illinois, Eastern Division. Filed O 6, 1905. Marshall E. Sampsell, Clerk.

Endorsed on cover: File No. 19,945. N. Illinois C. C. U. Term No. 139. Wilmington Star Mining Company, Plaintiff Error, *vs.* Minnie Fulton. Filed October 26th, 1905. File N 19,945.